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RIGHT HON. FRANCIS BLACKBURNE.



Engraved by C.H. Jeens

Frances Blackburne

as Lord Chief Justice of the Queen's Bench

LIFE

OF THE RIGHT HON.

FRANCIS BLACKBURNE,

LATE LORD CHANCELLOR OF IRELAND,

SOMETIME ALSO

MASTER OF THE ROLLS, LORD CHIEF-JUSTICE OF THE QUEEN'S BENCH, AND LORD JUSTICE OF APPEAL,

CHIEFLY IN CONNECTION WITH HIS PUBLIC AND POLITICAL CAREER.

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BY HIS SON,

EDWARD BLACKBURNE,

ONE OF HER MAJESTY'S COUNSEL IN IRELAND.

X X C ? 3

"The purest treasure mortal times afford
Is—spotless reputation: that away,
Men are but gilded loam or painted clay.
A jewel in a ten times barred up chest
Is a bold spirit in a loyal breast."

KING RICHARD II. *Act* i. *Scene* 1.

London:
MACMILLAN AND CO.
1874.

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TO THE

MEMORY OF HER

WHOM HE MOST LOVED AND HONOURED,

AS WIFE AND FRIEND,

THIS RECORD OF HER HUSBAND IS AFFECTIONATELY

Dedicated

BY HER SON.

PREFACE.

THE eminent man, to a narrative of whose public life and services the following pages are chiefly devoted, was one of those who, by their great intellect and character, have at different periods, but at rare intervals, played a conspicuous part in the history of their respective countries, and who have left a mark which Time will but slowly, if ever, efface.

The story of the life of such a man cannot but prove of interest to the general reader, but this interest is greatly enhanced when the circumstances of the times in which he lived, and the arena in which his distinctions were won, are borne in mind. Ireland has been styled "the battle-field of party," but it was more than this at the period when he was first called on to take a part in her affairs.

Without influence or connection, his reputation stood so high, that he owed in the first instance

his appointment as Attorney-General to those who to some extent (at least) were in political antagonism with him, but who at the same time felt that in securing his services they were doing not merely what was best for the interests of the country, but also for their own reputation.

Raised successively to the posts of Master of the Rolls, Lord Chief-Justice of the Queen's Bench, Lord Chancellor, Lord Justice of Appeal, and again Lord Chancellor, he filled more judicial positions, each of them, too, in their respective spheres, of the highest rank, than any man in Ireland or (we believe we may add) in England has ever done; and he discharged the varied duties of those high offices in such a manner as to elicit universal admiration, and to place him in the foremost rank both as lawyer and judge.

Blackburne was, however, not less distinguished as a lawyer than as a statesman. His name has been identified with some of the most turbulent and stormy periods in the history of Ireland, and his great sagacity and intimate knowledge of the people made him one of the most successful administrators that his country has ever seen. It is, therefore, important to state briefly what the author believes were the views which Blackburne entertained as to the fitting

manner of governing Ireland, and which, if firmly carried out, would go far to raise it from its present unhappy position.

From the period when Strongbow, with a handful of adventurers, in the reign of Henry II., landed on the shores of Ireland, to take possession of it in the name of the King of England, down to the present, she has been a source of constant disquietude and difficulty. It would, however, open up too wide a field, and also be foreign to the author's purpose, to enter into a consideration of the various causes which have led to this result. He cannot, however, abstain from referring to the admirable and learned treatise of Sir John Davies,[1] Attorney-General for Ireland in the reign of James I.

The writer has given in it an account of the various abortive attempts which had been made from time to time by successive English sovereigns, down to the period of which he was treating, to reduce the country to obedience, and of the causes which led to their failure, and having stated the various measures which were then being adopted with respect

1 "A discoverie of the true causes why Ireland was never entirely subdued, nor brought under obedience of the crowne of England untill the beginning of His Majesties happie Raigne." Printed exactly from the edition in 1612. London: 1747.

to the civil government of the country, and that "two other new circuits had been established for justice of assize," he adds,[1] "Againe these Circuits of Justice did (upon the end of the warre) more terrifie the loose and idle persons than the execution of the martial law, though it were more quicke and sodaine, and in a short time after, did so clear the kingdom of theeves, and other capitall offenders, as I dare affirme, there have not bin found so many malefactors worthy of death in al the six circuits of this realm (which is now divided into thirty-two shires at large) as in one circuit of six shires, namely the Western Circuit of England. For the troth is, that in time of peace, the Irish are more fearefull to offend the law, than the English or any other nation whatsoever." He further adds,[2] "Briefly the clock of the civil government is now well set, and all the wheeles thereof doe move in order. The strings of this Irish Harpe which the Civill Magistrate doth finger, are all in tune (for I omit to speak of the State Ecclesiastical) and make a good Harmony in the Commonweale. So as we may well conceive a hope that *Ireland* (which heertofore might properly be called the *Land of Ire*, because the *Irascible* power was predominant there for the space of 400

[1] *Ibid.* p. 267. [2] *Ibid.* p. 281.

years together, will from henceforth proove a land of *Peace* and *Concorde*, and though heertofore it hath bin like the leane Cow of Egypt in *Pharaoh's* Dreame devouring the fat of *England*, and yet remaining as leane as it was before, it will heerafter bee as fruitful as the land of *Canaan*, the description whereof in the 8th of *Deuternomie* doth in every part agree with *Ireland*, being *Terra Rivorum aquarumque et Fontium; in cujus Campis et Montibus erumpunt fluviorum abyssi, Terra frumenti et hordei, Terra lactis et mellis; ubi absque ullâ penuriâ comedes panem tuum et rerum abundantiâ perfrueris,*" and he concludes as follows:[1] "But since the crown of this kingdom with the undoubted right and title thereof descended upon his majesty, the whole island from sea to sea hath bin brought into his Highnes peaceable possession, and all the inhabitants in every corner thereof have bin absolutely reduced under his immediate subjection; in which condition of subjects they will gladly continue without defection, or adhæring to any other *Lord* or *King* as long as they may be *Protected* and *Justly Governed*, without *Oppression* on the one side or *Impunity* on the other. For there is no Nation of people under the Sunne, that doth love equal and indifferent justice

[1] *Ibid.* p. 283.

better than the Irish, or will rest better satisfied with the execution thereof, although it bee against themselves, so as they may have the protection and benefit of the law, where, upon just cause, they do desire it."

In these few pregnant sentences of Sir John Davies's is to be found the true solution of the problem of the proper government of Ireland. Good laws firmly and impartially administered, "without oppression on the one side or impunity on the other."

Thoroughly opposed to sentimental or sensational legislation, Blackburne considered it unnecessary to have recourse to what were styled "healing measures," which might fairly be compared to the Assyrian rivers of old, in their inability to stay the leprosy of disaffection and discontent, believing that the true secret of governing Ireland lay in an unflinching administration of the law, dealt alike to all with a firm and impartial hand, without favour or distinction; and it was upon this principle he acted.

In proof of this, the author refers to that which unquestionably was one of the most striking features in Blackburne's public career, viz., his successful prosecution of O'Connell in 1831. At this distance of time it is by no means easy to realize its great

significance and importance, but it is only necessary to refer to the history of that day in order to understand the state of fear and anxiety which prevailed at the idea of any failure taking place, and the great relief which was felt when O'Connell's defeat and submission to the law became known.

The fact is that after the Clare election in 1826, when O'Connell contested the county with Mr. Vesey Fitzgerald, the government candidate, and carried it as it were by storm, the power of the former, great before, culminated; and Sir R. Peel, who at the time had avowed himself a determined opponent of Catholic Emancipation, came down to the House of Commons in 1829 and introduced the measure to which he had previously declared his unflinching opposition. Two years afterwards Blackburne was called upon to meet face to face the man to whose power and influence England had so recently succumbed.

Had the prosecution of O'Connell failed, and had he succeeded in his endeavours to brave the law, it is difficult to say what would have been the result. It may be that the firm and determined attitude assumed by Blackburne saved Ireland from bloodshed and an open rupture with England.

As the various other topics connected with his public career are dealt with in the following pages, it is unnecessary to allude here more particularly to them. The author however wishes to add a few words with respect to himself. He can say with perfect sincerity that he has felt in many ways his inability to do adequate justice to the subject. He does not, however, by this desire to deprecate criticism, which the work from its character of necessity invites, and he has merely made the above observation in order that his readers, if disposed to cavil, may make allowance for the difficulties with which he had obviously to contend.

The task, though an arduous one, was in truth to the author a labour of love, for it brought with it many pleasurable recollections, inasmuch as the memory of the past was recalled, and he was led back in thought to the years of delightful intercourse during which the relationship which subsisted between them was rather that of intimate friends than of father and son.

It is to be regretted that Blackburne did not (except in some few instances) keep copies of his letters, which would have been of no small interest and value. The reason for his not doing so is apparent. A man of action and energy, he was careless of

his name except so far as it might be identified with his acts, and the copies of his letters which are extant are merely those which were made as rough drafts or by way of reference.

In conclusion, the author feels that the publication of the work has been too long delayed, but circumstances over which he had no control prevented until very recently his undertaking it.

RATHFARNHAM CASTLE,

December, 1874.

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RIGHT HON. FRANCIS BLACKBURNE.

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ALTHOUGH the name of Blackburne, or (as it is spelled in the old records) "Blakebourne," is to be found in the Patent Rolls so far back as the time of the reign of Richard II., we have not been able to ascertain at what exact period the Meath branch of the family settled in Ireland; but it was probably in the reign of Queen Elizabeth. We find

that John Blackburne was living at Footstown, in the above-named county, in the year 1709, and was succeeded by his son Richard, who in the year 1730 acquired by purchase the fee-simple of it. By his will, dated in 1737, he devised the estate to his three sons, whom he appointed his executors, in the following quaint but admirable language:—

"And finally I do hereby authorize ordain and appoint my three sons, George Blackburne, Nathaniel Blackburne, and Charles Blackburne, to be my executors, unto executing of this my last will and testament, in equal power and authority to act in the execution thereof; charging and adjudging them as in the presence of Almighty God that there be no debates, troubles, or lawsuits between them, for, or upon account of, any defect in the framing of this my last will, but that it may be taken in the plain literal sense thereof,[1] and that

[1] Although Richard Blackburne was not a lawyer, he appears to have had a very good notion of the proper canon of construction as applied to wills; and the clause which we have quoted reminds us very forcibly of the language used by Lord Wensleydale in the case of Grey *v.* Pearson, 6 H. L. C. 106, "that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, and not further."

they do unite as brethren, and love one another as I have loved them, which if they fail not to do, they need not doubt of the blessing of God upon their honest endeavours, and prosperity in this place."

George, the eldest son, subsequently acquired the whole estate, and by his will, dated in Jan. 1769, devised it to his sons, Richard, Anthony, and Edward, successively in tail. Richard married, in the year 1773, Elizabeth, daughter of Francis Hopkins of Darvistown, in the same county, who was lineally descended from the celebrated Dr. Ezekiel Hopkins, Bishop of Londonderry during the memorable siege of that city in 1688. There were issue of the marriage five children, of whom Francis was the fourth and only surviving son (his brother George having died in infancy). He was born at Great Footstown on the 11th of November, 1782, a year rendered memorable in Ireland by the grant of its independence. As a child, he gave no promise of the great excellence which he afterwards showed so conspicuously. His mother, in a letter to one of his relations, alluded to his want of aptitude, and slowness in learning. This must have been, however, when he was very young, because we find that before he went to school in 1792, and when he was but ten years of age, he had, by the assistance and

teaching of the Rev. Brabazon Disney, the rector of the parish, mastered the rudiments of Latin, which could have hardly been the case had be been slow, or dull of apprehension. We have, besides, in our possession a letter written to a cousin of his, James Hopkins, dated in January 1791, when he was but eight years of age, which is in every way an admirable specimen of the progress which the boy had then made. It is more than probable, therefore, that want of attention and application, rather than of abilities, was that of which his mother complained. When ten years of age, he was sent to school at the Rev. Hugh Nelson's at Dunshaughlin, a little village in the county of Meath, not far from Navan, where he remained for about a year and a half. He always spoke with the greatest distaste and repugnance of the time which he spent at Nelson's. He had left the home of which he was the idol, and his school experiences were not calculated to soothe or allay the feeling of loneliness which the separation from those to whom he was deeply attached had excited.

The school was one of the ordinary character of that time—rough and badly managed, and, in addition to its discomforts, the master was a man whose stern and unbending character made him

an object of fear rather than of love and respect. Under these circumstances, it is not a matter of surprise that his progress was but slight while he remained with him. We have only to add, before leaving this part of our subject, that this gentleman was one of those who fell in the Rebellion of 1798, his house having been attacked at a very early period of the outbreak, and he himself killed at the same time by the insurgents.

We have already stated that Francis remained at Dunshaughlin for about a year and a half, and we shall now detail the circumstances which led to his removal, and which were to alter the whole character and purpose of his future life. The state of Ireland at the time was most unsettled; the French Revolution had roused an insurrectionary spirit, which in the year 1793 manifested itself unmistakably in the county of Meath, as well as in other parts of Ireland. A confederacy which styled itself "Defenders" had extended its operations to it; and assassinations, the plunder of arms, and the destruction of property, produced such a state of confusion, intimidation, and alarm, that many fled from their country homes, and removed to Dublin and other towns for safety and shelter. Some of the more courageous held their ground, amongst

whom was Richard Blackburne; and though kept in a continual state of apprehension and alarm, he remained with his family at Footstown unmolested, having deposited his fire-arms with his brother Edward,[1] who resided at his house at Parsonstown, a short distance from his own, and in which he literally kept a garrison for his own security and that of the arms and ammunition intrusted to him by his less protected neighbours. His was no solitary, or even unusual case; we believe that many other country gentlemen did the same thing. From the unsettled and disturbed condition of Ireland, and from the want of an organized body of police, men of property were obliged, in their own defence, to form a plan of self-proecttion, and by their own efforts to repress, or at all events to make a stand against, and to set at defiance, the lawless bands which

[1] Irish hospitality has been always proverbial, but we very much question whether the following has been excelled by any of the numerous stories told with respect to it: An old bachelor named Adams, and a connection of Edward Blackburne, rode over in '98 from his own place, situated at a short distance, to spend the night at Parsonstown. The Rebellion broke out suddenly, and he continued there until the "troubles" (as they were styled) were ended. He found, however, his quarters so good, and he was, in addition, so pleasant a companion, that his visit was prolonged from day to day, and he never returned home, but died, we believe, many years afterwards in the house which he had visited with the intention of merely spending a single night.

infested the country. Richard Blackburne remained at Footstown for about two years after the period of which we have been speaking. He was very popular with the lower classes, and it was supposed that he with his family might continue to reside there in safety, more especially as there appeared to be no inducement to molest or injure them.

Such, however, was not the case; the son of a herdsman of Edward Blackburne's, who was himself a "defender," struck with compunction, revealed to his master the existence of a conspiracy which was formed for the purpose of making an attack on the house at Footstown, seizing the owner and its other inmates, and having captured them, of carrying them to Parsonstown and murdering them in front of the house, unless it, with its inhabitants and all the arms deposited in it, surrendered at discretion. Edward Blackburne, to whom this timely and providential warning was given, determined to baffle the designs of the conspirators; and foreseeing that the danger was imminent, and that it could only be arrested by prompt and speedy flight, took at once the necessary measures for having the entire family removed from Footstown. These were not divulged to any of the members of it, who were kept in complete ignorance of the danger in which

they were placed, until carriages came, to take them to the village of Kells, situate at some distance, from whence, after a short time, they eventually removed to Dublin.

Such is the narrative of the circumstances under which the Blackburnes were driven from their home, and it presents a sad picture of the unhappy condition of Ireland at the time. A quiet and unoffending family, beloved and respected by those around them, were compelled, through fear of the consequences, should they remain, to fly from their home —a home to which they never returned. We cannot say how this happened. The house has been long since dismantled. The walls, we believe, still remain; but it has never been inhabited from the day that the family fled from it in terror and alarm. This event was the turning-point in young Blackburne's life. It is very probable that, had matters remained as they were at Footstown, he would, after a few years, have taken to a country life and to country pursuits, of which he was very fond. This, however, was not to be the case. On their way to Dublin his family met him at Dunshaughlin, and he then for the first time learned the change that had taken place—that for the future Dublin was to be his home, and that his school life at

Nelson's was soon to terminate. He joined his family at the commencement of the following summer vacation, and from this time a new and brighter career opened on him. He was sent to the school of the Rev. William White, who enjoyed, and with justice, the reputation of being not merely a ripe scholar, but one of the best teachers of his day. As a master he was severe and strict, but at the same time just, and had the power of imparting knowledge, which, without saying more, is one of the highest qualifications for a schoolmaster. He lived, we believe, to attain a good old age, at all events long enough to witness the success in after life of many whose talents he had been the means of so materially fostering and developing.[1] From the time that Francis was placed under the tuition of Mr. White his character and disposition underwent a change; he had shaken off the feeling of listless despondency which the severity of his treatment at Nelson's had caused; and from the day that he came to White's school until he left it to enter college, he became distinguished, not

[1] Amongst these we may enumerate the late Baron Greene (to whom allusion is made in a subsequent part of the present work); Richard Nun, Q.C., late Chairman for Tyrone; and Richard Houghton, who was formerly Professor of Eastern Languages at (we believe) Addiscombe.

merely by his abilities, but by his steady and unflinching application. His talents were now for the first time being developed, and these, coupled with his great industry, soon placed him in a foremost position. A great and powerful incentive, too, weighed with him. The paternal property was but small, and at the time encumbered. His father was, we believe, a kind and excellent, but an improvident man; he was, moreover, a great sufferer from gout, and unable, therefore, to attend to or manage his affairs; and had it not been for the thrifty care and admirable skill of his wife, who was a woman of great cleverness and sagacity, the small property would probably have been dissipated, and it was only by the exercise of the greatest prudence and economy that the family were saved from comparative want and poverty. Francis was a witness of, and he himself was a sharer in, the struggles and sacrifices of those to whom he was so deeply attached, and he felt that upon his exertions the future of the family altogether rested. This roused in him a feeling and desire of independence, and an unconquerable craving to raise himself and his family to their proper position, which from their narrow circumstances they were unable to take. He had learned what his powers were, and

he resolved that no efforts on his part should be wanting to carry out that for which he so earnestly longed. He remained at White's school until the year 1798, and in the month of July of that year entered Trinity College as a pensioner, being then in his sixteenth year. At that time it was by no means uncommon for lads to commence their college career at an early age; and in his case the eager and indomitable desire to attain distinction, coupled with his abilities and perseverance, made him a formidable rival to others who in point of years surpassed him. He entered college upon the eve of the breaking out of the Irish Rebellion; and although the day upon which he entered was one of those fixed for the general admission of students, but two candidates presented themselves. At first sight it is not easy to understand how this happened, but a glance at the condition of the country, which at the time was most lamentable, at once supplies the reason. It is at present difficult, if not impossible, to picture the state of excitement and alarm which filled all classes, and which had become almost habitual; men's minds were torn by perplexity and fear, which is not, however, a matter of surprise, when the imminent and apparently inevitable bloodshed which the French invasion of

1796 and 1797 foreboded is borne in mind. The organization, too, of rebellious measures were, to the loyal and well-disposed, a source of continual apprehension, while threats of confiscation and of death were freely made to all who refused to join in the wide-spread and well-planned conspiracy. We do not intend to make any further allusion to the Irish Rebellion of 1798—it is now a matter of history—and we have merely done so to account for the circumstances to which we have referred. The falling off in the number of students who generally entered college was, however, but temporary, because we find that the subsequent entrances made up for the deficiency, as Blackburne's class consisted of 19 Fellow-Commoners, 62 Pensioners, and 10 Sizars, in all 91—which, although much smaller than the classes of subsequent years, was about the average of those of that period. Richard Blackburne died a few days after his son's entrance: he had been for years, as we have stated, a great invalid from gout, and was taken off suddenly by an attack of that malady. His family consisted of his wife, one son, and three daughters, who at the time resided in Chatham Street, which had then occupants of a different class from those who now inhabit it.

Dublin had but few suburbs or outskirts—these

have been the growth of the last forty or fifty years, —and the squares and larger streets of the metropolis were inhabited by the resident aristocracy and gentry. This state of things continued up to the date of the union, and for some time afterwards, as its effects were not felt immediately. However, the necessary consequences followed in a few years; and many of the houses in the leading parts of the city having become deserted by their former inhabitants, either passed into the hands of a different class, or became offices or public institutions; and those who formerly were contented or obliged to dwell in smaller or less pretending localities, found, when the change came, that they could procure more airy and commodious houses elsewhere, and so Chatham Street and a host of others of a similar stamp were in their turn deserted by their former denizens and converted into shops.

But to return to our subject. On entering Trinity College, a new career opened on Blackburne; his great diligence and talents soon reaped their fruits; college distinctions fell to his share, he won a special classical premium (the only one given in his time or class), and having sat for a scholarship in 1801, took, we believe, the first place. The life of a hard-working student does

not afford much room for anecdote or story; at best it is generally but a dry record of laborious toil and exertion, and Blackburne's case formed no exception to this rule. Besides, all those who struggled with him in the race for fame have passed away, and with them the reminiscences of his college life. There was one incident which he used to mention with great delight, of "Jacky Barrett," the well-known learned and eccentric "fellow," which we here give. Although the practice of studying with a private teacher (or, as it is termed in England, "coaching") was commonly adopted at the time by students who sought for the higher distinctions, Blackburne's means were too limited to permit him to do so, and the only instruction or assistance which he had was that which he obtained from the college lectures, which were given to the students generally, and of these he was a regular and diligent attendant. The practice was then, as at present, for the lecturer to examine the students in the work which he had given them for preparation on the previous day. On one occasion Blackburne happened to sit next to a fellow-student whose mind, as far as his knowledge of his work went, was what Locke styles "a sheet of white paper," and who asked him to translate a portion

of the author (we believe, Demosthenes) for him, which he accordingly did. While both were thus engaged, the sharp eye of Barrett saw what was going on, and assuming that Blackburne was the delinquent, called out to him in a stentorian voice to "take the book and go on," which he did of course at once, to the great astonishment of the former. Blackburne said that he should never forget the look of puzzled surprise and astonishment depicted on Barrett's features when he discovered his mistake. It was ludicrous in the extreme. He made no remark whatever at the time; but an impression had evidently been made upon him, for he became a fast friend to Blackburne during the remainder of his college career.

Blackburne had no easy battle to fight to win distinction. Among his competitors were men of no small character and reputation; for instance, James Traill Hall, who became one of his Majesty's counsel, but who was cut off prematurely; Richard Moore, subsequently Judge of the Court of Queen's Bench; William Curry, who became Master in Chancery, and Robert Daly, afterwards Bishop of Cashel, together with Blackburne's first cousin, James Hopkins, who was appointed Rector of Stanbourne, in Essex, where he died some years since.

Having passed triumphantly through his undergraduate course, Blackburne completed his career by obtaining on taking his degree the gold medal, which by a decree of the Board of 1793 was given "to every student who should have answered every examination from his entrance to the taking of his bachelor's degree, and at each examination should have got judgments not inferior to one *Bene* with *Valde Bene*." The reader will at once see that this was no light distinction. The student who obtained it had not merely to gain the highest marks, but if during his undergraduate course he omitted a single examination, he was disqualified. The test of scholarship in both branches of learning was applied, while at the same time the no less important one of studious and diligent attention was required; and we find, therefore, that out of the entire class there were but six men who obtained the distinction. He took his degree at the spring commencements of 1803, and for the first time the great mental strain and anxiety told on him. He mentioned that the day after his degree examination he fancied that it had not taken place; and under this impression dressed himself in haste, and rushing down to the college, reached it as the clock was about striking nine (the hour at which

the examinations commenced). He was stopped on the steps of the hall by one of the porters, who asked him what he wanted, to which he replied "that he was going in for his examination," having forgotten that he had so recently passed it. The result is easily seen; he at once returned home, and paid the penalty of his over-work by being attacked by a brain fever, from which, however, thanks to his fine constitution, he soon recovered.

Shortly before he took his degree he joined the College Historical Society. It may not therefore be uninteresting to give a short sketch of this institution, which contained amongst its members so many illustrious men, and which played such a distinguished part, and with such varied fortunes, in nursing and developing the rising talents of the young men of that day. It appears that a society by the name of the Historical Club was set on foot in Trinity College so far back as the year 1753, for the cultivation of history merely. Its objects were felt, however, to be of too circumscribed a character; because in about a year after its foundation, a material improvement was made by engrafting on the original plan a monthly debate on an historical subject. There was, however, an earlier society than this, as there appears amongst the proceedings the

following, dated June 11, 1757:—"A committee sat to take into consideration a scheme for incorporating with the old Historical Society," signed "Stopford."

What was the further fate of the society we are unable to state, as all facts connected with it are lost. It seems to have had but a very brief tenure of existence, as we find it stated "that in 1770 several students observing the insufficiency of the academical course as a qualification for active life, obtained a grant of apartments in college for the purpose of devoting one evening in every week to the cultivation of those useful branches of the Belles Lettres which were totally neglected in the undergraduate course." From 1770 to 1794 this society carried on its operations successfully, and had amongst its members many who afterwards became distinguished in their several walks of life; but from causes altogether unknown it fell to the ground (as its predecessors had done), and a secession of its members having taken place, a new society was formed in the last-mentioned year, and styled, "The Historical Society of the University of Dublin, instituted for the cultivation of history, oratory, and composition." This had, as the last, a brilliant career, but it was also destined to come to a

premature end. A collision having taken place in the year 1815 between the committee and the heads of the university, the society, in the midst of its career of usefulness, was dissolved.[1]

The circumstances of the times, we think, in no small degree contributed to the success of the Historical Society as a school of oratory. The display of eloquence nightly [2] witnessed in the debates of the Irish House of Parliament must have acted as a powerful incentive to the young men of talent of that day. True it is that at the time when Blackburne joined the society the Irish Parliament had ceased to exist, but the recollection of it still was fresh in their memories, and this of itself operated as a powerful inducement to excite and stimulate their exertions.

[1] We have abridged this account of the Historical Society from an able pamphlet, entitled, "A Brief Statement of the Causes which Led to the Dissolution of the Historical Society of Trinity College, Dublin. By a Member of the Late Society. Dublin, 1815." The author was, we believe, the late Bingham Walker Hamilton.

[2] In the Life of Lord Plunket, written by his grandson, the Hon. David Plunket, it is stated, vol. i., p. 33, that "in the Irish Parliament House a gallery was specially set apart for University students, where they might imbibe a love of eloquence and of liberty, and learn the principles of a just and proud ambition, the details of public business, and the rudiments of constitutional law."

Blackburne saw soon after he entered college, that in the Historical Society a great opportunity was afforded to him of learning the use of the weapons with which he was to do battle in after life; but he was unable, in consequence of the demands made upon his time and energies during the undergraduate course, to devote his attention to it. After he had taken his degree he at once became a member of the society, and a successful competitor for its prizes, having carried off in 1803 the medals for oratory and history.

He now bid farewell to the scene of his labours and triumphs, and took the necessary steps in order to be called to the Irish bar. He appears from a very early period to have selected this as his future profession. His uncle, Anthony Blackburne,[1] who died in the year 1803, and who bequeathed him his law library (consisting principally of blackletter

[1] It was of him that the following anecdote, in connection with Sheridan, is told. Being of a hot and, we believe, of rather a bellicose disposition, he took offence at some witty after-dinner speech or remark of Sheridan's. Accordingly he called on the latter early next morning, but heard that he was in the act of dressing. Having made his way up to his bedroom, he demanded immediate satisfaction. To this Sheridan (whose toilet was but partially completed) at once assented, but added, "You will, of course, wait until I have finished shaving." The other having agreed to this very moderate request, Sheridan replied, "Then I'll never finish it." This, we need hardly add, put an end to the affair.

volumes) had attained considerable eminence at it, and it was probably this circumstance, coupled with young Blackburne's desire for distinction, which led him to select the bar as his profession rather than the Church, into which he had at one time thought of entering.

Having kept the usual number of terms at the King's Inn, in Dublin, he entered his name as a student at Lincoln's Inn, and having taken lodgings in London, commenced the study of the law with his wonted diligence and energy; and we here give the account which he has left of this period of his early life. His resources were but limited, for although by the death of his father he had become entitled to the paternal property, it was but small, to some extent incumbered, and had to bear in addition the support of his mother and sister.

After alluding to the benefit which he derived from the training of the Historical Society, and having stated that "it was the best ordeal which he could undergo as a test of his qualifications for the bar, and success in it, the best omen of his future fortune," he adds, "while endeavouring to acquire a knowledge of law, I experienced what is probably felt by most men who enter on such a study unaided (as I was)—a great degree of

disappointment. No matter what the amount of time or attention devoted to it, there was scarcely a sense of progress; there were no tests to try what degree of knowledge was acquired, or the power of applying any that was, to any practical use. This to a certain extent might have been achieved in the office of a special pleader or conveyancer, and many of my fellow-students had this advantage. It was, however, too expensive to be followed in this instance, and it was with satisfaction that I heard that Lord Downes had given an opinion to a young man who consulted him, that with due application of the approved elementary works, he might acquire a thorough knowledge of the principles of law, and be better employed in doing so than in labouring in a draughtsman's office. This was also the advice of my friend William Ball, the author of the 'Index,'[1] and the course made eligible, if not necessary, by the pecuniary considerations adverted to. The only insight into the great machinery of the law, was that of attendance in the King's Bench in England; and after spending the vacation of the year 1804 at Broadstairs, and labouring incessantly to make some impression on 'Coke,' 'Blackstone,' and 'Fearne,' the three following terms were usefully

[1] Index to the Anti-union Irish Statutes.

employed in reading assiduously and attending that court. It was filled by very able judges, and though imperative (to use the mildest term), Lord Ellenborough as well as Lawrence, and Le Blanc laid down and applied principles of law, so as to give it the character of a science. Erskine, Gibbs, and Garrow, then conducted every important case, and many great men were just rising into eminence, for instance, Abbott, Giffard, Copley. The transition from the English Court of King's Bench to the common law courts of Ireland presented a strong contrast of the bench and bar in the two countries. This will be understood when it is remembered that Lord Redesdale was Chancellor, Lord Downes Chief-Justice, Lord Avonmore Chief Baron of the Exchequer, and Lord Norbury Chief-Justice of the Common Pleas; while Plunket, Bushe, Curran, and a host of other able men, exhibited an array of talent with which one might fairly say the bar of England could not then compete." Such is the description which he has given of his first experience of the difficulties of acquiring a knowledge of law, and we do not think that our legal readers will cavil at or disagree with it.

Blackburne was called to the bar in Trinity Term 1805, and selected the "Home" as his circuit. His

college reputation seems to have preceded him, as he held four briefs when he first joined. In two of the cases questions were reserved for the superior courts, and as it devolved on him, as junior counsel, to argue them, an early opportunity was afforded him of displaying his legal knowledge and powers; and the manner in which he discharged his task elicited the commendations of the judges before whom the questions were argued.

He mentioned, as a singular coincidence, that the first case[1] which brought him into notice in the Court of Chancery was one in which the same question was involved as that in Ackroyd *v.* Smithson, which (as our professional readers are aware) first made the reputation of Lord Eldon.

From the date of his commencing to practise at the bar Blackburne's business rapidly increased, and his character as a sound lawyer soon stood very high, not merely with his own profession but with the bench. One one occasion, Lord Norbury, Chief-Justice of the Common Pleas, gave the health of the "junior" at the bar mess, on circuit, in the following short and pithy language—"Black Strap, Blackletter, Blackburne." For the information of those

[1] The case of Kellett *v.* Kellett, reported in 1st Ball and Beatty, p. 503.

of our readers who do not understand the allusion, we may explain that "Black Strap" is a term used for strong and muddy port wine; "Blackletter" that which is applied to old and abstruse law, and is so styled from the character in which it is printed; the remaining portion of the toast speaks for itself.

Another anecdote of Lord Norbury is also characteristic. In a case before the Privy Council, Blackburne's opponent was Paulus Æmilius Singer, a brother of the late Bishop of Meath. He was, we believe, rather verbose, and a contention having arisen as to the right of precedence, Lord Norbury decided the question by saying, "I think that Mr. Singer is right; we all know that the singers go before, the minstrels follow after."

At a very early period of Blackburne's professional life an incident occurred which even then showed his character. We should not, however, have referred to it, were it not that the course taken by him on the occasion was made the subject of misrepresentation by O'Connell in his letter to Lord Duncannon[1] (to which we shall again have occasion to refer), and by Shiel in his Sketches of the Irish Bar which appeared in the *New Monthly Magazine*.

[1] Letter of O'Connell to Lord Duncannon, 1834.

We shall therefore give Blackburne's account of what actually took place, quoting, in the first instance, the passage in O'Connell's letter. He writes: "By a singular fatality, the first act of his (*i.e.*, Blackburne's) political life was one of violent hostility to the Whigs. When that party were in power in the year 1806, the Irish bar had a meeting to address your relation, Chancellor Ponsonby, and Mr. Curran, on their promotion. Blackburne, then a young man at the bar, made a virulent harangue against the Whigs, and actually divided the meeting against the address." The following is Blackburne's answer: "Some time (months, I believe) elapsed between the promotion of Mr. Ponsonby and Mr. Curran. I don't recollect whether there was an address from the bar to the former; if there was, I neither spoke, voted, nor divided the bar upon it. When Mr. Curran was promoted to be Master of the Rolls, a requisition to convene a meeting of the bar to consider the propriety of addressing him was tendered to me to sign. I did so. The meeting took place. The address was opposed by many; amongst them by Mr. Plunket, the Attorney-General, and by Mr. Bushe, the Solicitor-General. Their reasons (not one of which was political) convinced me that the address

ought not to be presented. I voted against it, without making a single observation. The bar was divided, and the address carried. A committee was appointed to prepare the address, and a day fixed to receive their report. In the interval I found that Mr. O'Connell and others charged me with inconsistency in voting against the address after signing the requisition. When the bar met to receive the report and address, I came forward simply to justify myself, and to state that I had signed the requisition under the assurance and belief that I was left at perfect liberty to vote against the address, if, on the discussion of its propriety, I thought it right to do so. I neither spoke against the Whigs, made no political observation, nor divided the meeting."

This completely disposes of the charge which was at the time made against him, and also shows what the character of the man was, who, from a sense of principle and professional feeling, declined to lend himself to an interested and political movement, even at the risk of estranging some of his friends. We may, while on the subject, state that the course which he took, although distasteful to Mr. O'Connell and his followers, does not seem to have excited any ill will towards him on the part of Curran, as a friendly feeling subsisted between them up to the

period of the death of the former. Curran, it is well known, was himself displeased with the appointment. In his life, it is stated[1]—"With this appointment (*i.e.*, of Master of the Rolls) he was dissatisfied at the time, and he never became entirely reconciled to it. It imposed upon his mind a necessity of unaccustomed labour and unaccustomed restraint to which opposite habits of so many years did not allow him easily to submit. Whatever might be its dignity or emolument, it had no political consequence. It seemed rather like a compensation for former services than as a means of taking that honourable share to which he felt himself intitled in an administration that promised such benefits to Ireland. These sentiments of disgust, in which he perhaps indulged to an unreasonable excess, disturbed the friendship which had so long subsisted between him and the late Mr. George Ponsonby, whom Mr. Curran considered as having, by his acquiescence in his appointment to the Rolls, attended to his nominal interests at the expense of his feelings and his reputation." So far therefore as Curran himself was concerned, it is perfectly plain that he entertained anything but grateful feelings to his friends the Whigs, who (he considered) had shelved him, and had placed him, if not in a false position, at

[1] Life of Curran, by his son, vol. ii., p. 241.

all events in one unsuited to either his talents or his previous habits of life; and it is very questionable whether, under the circumstances, he received with any true feelings of gratification the address which was presented to him by the bar. Indeed, in his reply, he scarcely alludes to the fact of his promotion, and certainly does not do so in terms of gratitude. We would make but this further remark with respect to the transaction, viz., that although Blackburne was but one year at the bar at the time, it is plain that even at that early period he had taken such a position in the profession as to attract the notice of his enemies as well as that of his friends.

It has been already stated that his paternal property was, when he succeeded to it, incumbered. But so rapid was his success at the bar, that in four years after he started at the profession, he was able to clear off the charges upon it.

CHAPTER II.

Great reputation of the Court of Chancery in the time of Lord Manners.—Names of some of the distinguished practitioners in it.—Blackburne's marriage.—His own account of the happiness of his married life.—His call within the Bar in 1822.—Condition of Ireland at that period.—Recall of Earl Talbot and appointment of the Marquis Wellesley as Lord-Lieutenant.—Renewal of the Insurrection Act.—Appointment of Blackburne to administer it.—His reasons for accepting the post, and successful administration of its duties.

THE Court of Chancery in Ireland in the time of Lord Manners had amongst its practitioners men who have left behind them great and proud memories. Saurin and Bushe (respectively Attorney and Solicitor-General), Burton, Plunket, the two Pennefathers, Lefroy, and others, gave by their character and talents a tone to the manner in which the business of the court was transacted, and raised it to the great position in which it then stood. It was a great school for the training of the younger men who were gradually creeping up the first step of the ladder, amongst whom was Blackburne; and although his business was not as large as that of

many who practised in the court, yet a reference to the law reports of the period will show that it was considerable. As a common law practitioner his reputation stood high on his circuit, and his Nisi Prius practice was very large.

Four years after he was called to the bar, he married Jane, only daughter of William Martley of Ballyfallon in the County of Meath, and of Alice Hopkins, his maternal aunt; and he writes in the following terms of that union:—"Of the happiness which this marriage brought with it no tongue can tell. It has now continued, by the favour and mercy of God, nearly fifty-three years. What a mass of hopes, of fears, of pain and joy, such a retrospect involves; but to dwell on it would be idle; enough it is to say that during its whole length there never was a moment of abated confidence or affection; and that unabated mutual love made the blessing as bright as it was enduring." There were fourteen children of the marriage, of whom but five survived him.

It is needless to continue further an account of his success at the bar at this period of his life; suffice it to say that his health began to suffer from the amount of labour which he underwent, and he determined, therefore, to confine his practice to the Court of Chancery, and to decline any common law

or Nisi Prius business, except when specially retained. He was called within the bar in Hilary Term, 1822, from which period to the close of his life his name was more or less connected with the history and affairs of Ireland; and we now arrive at what may be considered the commencement of his public career.

The condition of Ireland at the time of which we are treating was most deplorable. The hopes held out by Pitt, when advocating the measure of the union, that the prosperity of the country would be trebled, had not been fulfilled. Absenteeism—one of the greatest banes of any country—had increased, while, with diminished resources, the population had outstripped the means of support. Destitution prevailed, and, as a necessary result, dissatisfaction and discontent. Political agitation, in addition, helped to keep alive the spirit of sedition and hatred to British rule, which had never been quenched, and which only waited for a favourable opportunity to break again into flames.

It would be too much to assert that the spirit of insubordination pervaded the whole of Ireland; but if unchecked by a firm hand, it is difficult to say what would have been the result. Lord Wellesley was at the time Lord-Lieutenant of Ireland, having been appointed to the post at the latter end of 1821. Lord Talbot had been recalled; and as it was known

that the bias and feelings of the former were strongly in favour of the Roman Catholics, the government fondly hoped that by sending him to take the administration of affairs, he would have been able by a new and conciliatory policy to bring the country to a state of comparative order and tranquillity. In addition to his great reputation as an elegant and accomplished scholar, he had the character of being an able statesman and administrator; and although some may question this, it must be admitted that he brought to the task great official experience, and a sincere desire to benefit Ireland.

Lord Wellesley found, however, ere long (as those who had preceded him had done) that it was a hopeless effort to attempt to rule the country by the same laws as those by which England was governed; or to expect that Ireland would be brought by the ordinary methods from its chronic state of insubordination and rebellion to quiet and obedience; and accordingly we find that the government were again obliged to apply to Parliament to renew the stringent and (we may add) unconstitutional measure termed the Insurrection Act.

Lord Londonderry, in moving for leave to bring in the bill, drew a gloomy picture of the condition of the country. Speaking of its state of

turbulence, his lordship said[1]—"It was a rebellion in which ignorance and crime were called forth in systematic array to sweep arms out of the hands of the loyal man, and turn them against the state. . . . It was a rebellion in which a blind submission was attempted to be enforced to a system of terror dictated by an invisible authority; by a power directing its whole physical means against the constituted authorities of the country, and seeking, by the foulest crimes which degrade and disgrace human nature—assassination and murder—to deter every man, from the highest to the lowest, whether in courts of justice, in the exercise of magisterial functions, or in the field, from discharging his duty to the country;" and his lordship "delivered the solemn request of the Marquis of Wellesley to the House, that if it should wish him to perform those high duties which he was called on to discharge, it would give him those high and extensive powers which had been given to his predecessors in former instances."

The Insurrection Act was therefore renewed, and it may be as well (before proceeding further) to state briefly some of the provisions of the statute. It was entitled, "An Act to Suppress Insurrection and Prevent Disturbances of the Public Peace in Ireland;"

[1] Vide *The Quarterly Review*, vol. 46, p. 448.

and after reciting that tumultuous insurrections had from time to time existed in various parts of Ireland, principally promoted and supported by persons associating under the pretended obligation of oaths unlawfully administered, it provided that "special sessions should be held and presided over by one of his Majesty's serjeants-at-law, or one of his Majesty's counsel:" and it further provided "that the courts of session were to have all the powers of oyer and terminer, and were to proceed, without any grand or petty jury, and without any bill found, to try any persons brought within the provisions of the act. The offences specified in it were very numerous: those out of their dwellings an hour after sunset and before sunrise, those exciting any riot, or persons in the possession of arms, were, amongst others, liable to transportation for a period of seven years.

It will be seen from this sketch of the provisions of the act that it was of most stringent character, and it is plain that nothing short of urgent necessity would have warranted the government of that day in asking for these extraordinary powers.

In such a state of things it was, however, evident that, great as the powers conferred by the statute were, they would prove of little avail unless those to whom the government were about to intrust

the administration of its exceptional provisions, were men, not merely of firmness and determination, but of calm temper and judgment—in a word, men who, while on the one hand they would not permit the guilty to escape, would on the other interpose to shelter and protect the innocent.

Immediately on the passing of the act, certain districts of Cork, Clare, and Limerick were placed under its operation. To Serjeant Lloyd the county of Cork was intrusted, and to Serjeant, afterwards Judge, Torrens, the counties of Limerick and Clare. For some reason the results at Cork proved so different from those in Limerick and Clare, that it was deemed expedient by the government to recall Lloyd, and to appoint Torrens in his place. This made a further change necessary, and upon the refusal of Mr. Edward Pennefather (afterwards Lord Chief Justice of the Queen's Bench), to whom application was made in the first instance to undertake it, the post was offered on the part of the government, by Mr. Joy, the Solicitor-General, to Blackburne—to his great surprise, as he was the junior of the King's counsel, and of course thought that one of his seniors would have been selected. He no doubt was in large practice in the Court of Chancery, but this would scarcely have been a sufficient reason to have war-

ranted the government in singling him out of the ranks of the profession, had he not had the reputation of being a sound constitutional lawyer, and one therefore to whom the administration of the act might be safely intrusted.

Blackburne took some short time to consider. He felt, in common with Pennefather, great difficulty in acceding to the proposition, as the interruption of his practice, the uncertain and possibly protracted duration of the sitting of the court, made the task most embarrassing and (so far as his professional practice was concerned) injurious. The conclusion, however, at which he arrived was, that as one of his Majesty's counsel he had no option in the matter—that it was a duty almost strictly incidental to his position, and he at once agreed to undertake it; and though at the time it of necessity interfered with his court business, he never regretted the step which his sense of duty told him was the right one, nor had the government reason to complain of the manner in which the important trust confided in him had been discharged.

In a letter dated May 1823, Mr. Gregory, the under secretary to the Lord-Lieutenant, writes to him as follows:—"I have received and submitted to the Lieutenant (*sic*) your letter reporting your proceedings

since you have assumed the office of chairman of the special sessions, held under the Insurrection Act in the county and city of Limerick. . . . . and I am to acquaint you by his Excellency's command that your proceedings, as well as the view which you have taken of the disturbances which have prevailed in those counties, meet with his Excellency's high approbation."

It is right to mention, that in addition to his other duties, the judge appointed under the Insurrection Act was expected to send from time to time to the government accounts of the condition of the districts over which he presided, together with such suggestions and advice as he considered necessary; and we here give an extract from one of Blackburne's reports, which shows the character of his administration, and the wise and sagacious views which he entertained with respect to the manner in which the parts of the country brought under the operation of the act should be dealt with. "In any anticipation," he writes, "of the future state of the country, the attention is at once directed to the inquiry whether it is necessary to continue to have recourse to that power to which so much of the good at present experienced is fairly to be ascribed. Upon the question whether such a power be constitutional or not, I should intimate no opinion,

but that I wish to detach from that which I now feel it my duty to express any suspicion that I justify this power on any arbitrary principle. I regard the necessity of such a power as its justification; and I deplore that necessity as a great national calamity." Having then stated that although he considered, from the tranquil condition in which Limerick had continued for the two preceding months, it (with some exceptions) might be relieved from the operation of the act, yet that it would be prudent to renew it for a convenient time after the sitting of Parliament in 1825, he adds, "I am aware that it may be asked, can it be necessary to continue the act if it be safe to suspend its operation? and that the opinion may appear to be denied by one part of this, while it is asserted by the other. I must in explanation remark that the continuance of the power would form with me a reason for its suspension; deeply seated and long continued, the spirit of insurrection had acquired the force and inveteracy of habit, and a cessation from outrages must be regarded as a proof of the weakness and disunion of the system of confederacy, rather than a reform of the parts that composed it. I should say, therefore, confide in appearances, and try whether the dispositions and habits of the people have undergone a change by removing

coercion; but if, when coercion is removed, the power to resume it is destroyed or withheld, the transition under such circumstances may, and I think probably would, be attended with the effect of giving confidence to the disaffected, and inducing a return of disorder. The suspension of the law, when the power to exercise it exists, will be regarded as a boon purchased by the tranquillity of the country; and the existence of this power may constitute the best security against the recurrence of a necessity for its exercise; but I am anxious to guard against too extensive a construction of this reasoning. It must be qualified by a strict regard to the present condition of the country."

Blackburne continued to administer the Insurrection Act for a period of two years, during which time a great change was wrought in the counties over which he presided. The guilty were brought to justice, and the ill-disposed and rebellious taught by the examples which were made, that the law could not be trampled on with impunity, and that its violation would entail severe and certain retribution. At the close of his administration addresses were presented to him by the magistrates of the city and county of Limerick, and thanks given to him for having, by the firm and humane discharge

of his duty, restored good order and peace, and enabled them to dispense with the extraordinary powers conferred by the Insurrection Act.

The services which he had rendered to the government and the country caused the former to make further demands upon them. An affray having taken place in Fermanagh, during the time that he was administering the Insurrection Act, an investigation as to its cause became necessary, and he was asked by the Solicitor-General in the following letter to undertake it:—

"TEMPLE STREET, *Tuesday.*

"MY DEAR BLACKBURNE,—After all you have done for the public service, I am quite distressed at being obliged to solicit from you a further proof of your zeal for the interest of the country. It is the tax which your high character in the profession, and the great estimation in which you are held by the public, have imposed on you. There has been a serious riot in the county of Fermanagh, which the Lord-Lieutenant is particularly anxious to have investigated by one whose mind is not tainted by party prejudice, and whose opinion will carry with it all the weight which high character can give. His excellency has called upon me to point him out such a man. To whom, then, can I so properly look on the

occasion as to you? I know that it is enough to tell you that you can perform a service to the public, to induce you to forego every other consideration; but I cannot help thinking that his excellency would be particularly gratified by the thought that the inquiry was placed in your hands . . . .

"With many apologies for this application, believe me, my dear Blackburne,

"Yours very truly,

"H. Joy."

CHAPTER III.

Examination of Blackburne on the State of Ireland before Committees of both Houses of Parliament.—Anxiety of the Government to promote him.—The "Burning of the Sheas."—True Account of the Circumstances which led to the Conviction of the Murderers.—Blackburne's appointment as Serjeant in 1826.—Letters of congratulation from Lords Clare and Plunket.

In the year 1824, Blackburne was examined before committees of both Houses of Parliament, on the state of Ireland. The reputation which he had gained, in addition to his experience, made his testimony of no small value. He was examined chiefly with respect to the circumstances of the districts over which he presided as judge, and as to the working of the Insurrection Act, its operation in repressing crime and restoring tranquillity. His evidence was marked by the same sound judgment and sagacity which characterised his administration, and showed him to be not merely an able lawyer, but a man well informed as to the condition of the

country.[1] The government felt themselves under great obligations to him, and Lord Wellesley placed his name (as the fact was at the time well known) first on the list for judicial promotion; and his elevation to the bench had, with his consent, been arranged to take place in 1824, in anticipation of a vacancy on it, which, however, did not take place. The only occasion which afterwards occurred for promoting him during the viceroyalty of Lord Wellesley, took place when the post of serjeant became vacant, to which he was appointed in 1826.

When engaged in administering the Insurrection Act in Limerick, he was called upon to inquire into the case of the "burning of the Sheas." This fearful massacre—which, with its compeer in atrocity (the burning of Wildgoose Lodge in Louth), has, we believe, no parallel, if we except that of the burning of the unfortunate denizens of the barn at Scullabogue, in 1798—took place in the year 1821. Shiel, in his "Sketches of the Irish Bar," has given a graphic and, upon the whole, correct picture of its revolting details; but as he has inaccurately stated the circumstances by which the murderers were brought to

[1] Blackburne's evidence is referred to in Sir George Cornewall Lewis's essay on the Local Disturbances of Ireland, published by Fellowes (London) in 1836.

justice, we shall very briefly state the main features of the case, and refer our readers for a fuller account to Shiel's narrative.

The county of Tipperary was the scene of the dreadful crime. At the bottom of the lofty sugar-loaf mountain of Slievenamon, which stands out so proudly, and is so conspicuous an object in the surrounding landscape, and at some distance from the little hamlet of Glenbower, a respectable farmer of the name of Shea with his family resided. He had had some disputes about land with a man named Gorman, who was his tenant, and Shea having taken ejectment proceedings against him, and having succeeded in evicting him, Gorman determined to be revenged, and terrible was the retribution which he dealt to the unfortunate Sheas. He found no difficulty in enlisting the sympathies of those who were but too ready to assist him, and who entered as keenly into the matter, as if the cause of dispute was their own.

Gorman and his friends on consultation determined to murder, not merely Shea himself, but also the other members of the household. His revenge would not have been complete unless the family of the unfortunate Sheas was exterminated. Accordingly it was determined, as in the case of the burning

of Wildgoose Lodge—the story of which is told with such painful reality by Carleton (the great painter of Irish life)—to set fire to Shea's homestead, and to immolate the unfortunate victims. We do not intend to go into the harrowing details which transpired on the trial: suffice it to say that, in some respects, they are unsurpassed in the annals of crime. The peasantry (and this is a sad feature in the case), whether from fear of the consequences of divulging what they knew, or from sympathy with the culprits, made no sign, and gave no assistance to the Crown, and there was every probability therefore of the murderers escaping with impunity.

The manner in which the true nature of the fearful deed was discovered was as follows—but as in this particular Sheil's account is altogether inaccurate, it becomes necessary to mention very shortly the principal facts. Before giving them, it may be stated that the murders were committed in 1821, but none of the participators in the crime were brought to justice for some years afterwards. The reason for this delay will be seen presently.

The principal witness, and upon whose testimony some of the murderers were subsequently convicted, was a woman named Mary Kelly. She bore an indifferent character, and kept what is termed in

Ireland "a shebeen house," which enjoyed in other respects a doubtful reputation. She was a married woman, but was very lightly spoken of, and her house was the resort of the worst characters in the neighbourhood. Her story was shortly as follows:—She stated that Gorman, having determined on speedy revenge, enlisted the services of a daring ruffian of the name of Mahon; an improper intimacy was said to have subsisted between Mahon and Kelly, but this the latter denied. There was no doubt, however, that great friendship subsisted between them. He came to Kelly's house (which was situated at a short distance from the Sheas') a few days before the murders took place, and while there occupied himself in making bullets. Mary Kelly's instincts (knowing the character of the man) told her that some mischief was designed, and she intreated him not "to take away life." He turned the matter off, and in the meantime Catherine Mulally, a niece of Mary Kelly's (who was in the employment of the Sheas), having entered the house, he ascertained from her that they were well provided with arms, and this fact seems to have made the conspirators change their plans, and determine, instead of shooting the unhappy Sheas, to burn them in their beds. When Mulally had gone, Kelly begged of Mahon,

whatever he did, to spare her niece, which he promised to do. It is hardly necessary to say that his promise was disregarded, as the poor creature perished miserably in the holocaust with the other unfortunates.

The occurrence which we have just recorded took place on Saturday, and it was settled that on the following Monday the foul and cowardly deed of blood should be perpetrated. On the evening in question, Mary Kelly, who had suspected from what had taken place on the previous Saturday, and by various signs of preparation which she had observed, that something bad was intended—feeling also apprehensive for the safety of her niece, to whom she was greatly attached, and actuated too by some secret impulse—left her bed at the dead of night, without disturbing her husband, and having thrown his coat over her shoulders, silently crept from the house, and made her way stealthily (and under cover of the bushes) to that of Mahon. She heard men in conversation which lasted for some time. They subsequently left the house and her worst fears were realised. She determined to watch their movements, and having crouched behind a bush, was able to identify them. One of them carried sods of lighted turf,

the fire of which he kept alive by his breath. Creeping behind the hedgerow, she followed on, and, having ascertained that Shea's house was their destination, stopped at some little distance from it, and in a short time witnessed the execution of the tragedy. We do not give the sickening details,—Sheil has already done so: we would merely add that Mary Kelly had a second opportunity of identifying the murderers, as they, on their return from the scene of their guilt, passed close to the place where she lay concealed.

We have already mentioned that the murders were committed in 1821. Sheil states that the government got no clue to the perpetrators for sixteen months afterwards. Here he is plainly in error. There may have been, and most likely were, false lights held out; but the government did not receive any reliable information until a much longer period had elapsed after the commission of the crime. And this brings us to the part which Blackburne took in the preliminary investigation which led to the identification and subsequent conviction of some of the murderers.

Sheil (of whose narrative we have largely availed ourselves), after describing the state of mental agony which Mary Kelly for some time endured, and

which at last became insupportable, adds,[1] "at length her conscience got the better of her apprehensions, and in confession she revealed her secret to a priest, who prevailed upon her to give information, which, after a struggle, she communicated to Captain Despard, a justice of the peace for the county of Tipperary."

This statement is altogether inaccurate. There was no proof that she had revealed her secret at the confessional, nor of her having made any disclosure to Captain Despard.

The actual circumstances were as follows, (we are not aware that they have ever been made public, but in any case they cannot but prove deeply interesting) :—Mary Kelly, as we have stated, does not appear to have been considered by the crown as a person who could throw any light on the case. This seems to be somewhat strange, when we bear in mind, not merely her notoriously bad character, the more than doubtful reputation of her house, but above all its close proximity to the scene of the outrage. Whether she told her husband (whom she had left asleep on that dreadful night) of the scene which she had witnessed, or whether she

[1] "Sketches, Legal and Political," by the late Right. Hon. R. L. Sheil. London, 1854. Vol. i. p. 266.

kept the secret in her own breast, we know not; at all events it does not appear that any of the Kellys were looked upon as being able to give information or to throw light on the subject. Four years had elapsed, the crime remained involved in mystery, and the chances of discovery were day by day becoming less.

So things continued, when, a few days before Blackburne was about to leave Limerick (having closed the commission under the Insurrection Act) he received a communication from Captain Drought, the stipendiary magistrate, which, if true, was of the most important character. It informed Blackburne that a report had reached the magistrate, through a soldier quartered at the barracks, that a recruit named Kelly, and his mother, who had come to visit him, had spoken in such a manner as to lead to the suspicion that they were intimately acquainted with all the particulars of the burning of the Sheas. Their conversation, being carried on in Irish, was unguarded, and they spoke to each other without restraint.

Blackburne was requested to investigate the matter; and, after a searching examination of Mary Kelly through an interpreter (for she could not speak English), he was so fully assured of the truth of her statement that upon his return to Dublin, he com-

municated the facts to the Solicitor-General, who was not a little surprised, having had a few days previously a statement on oath forwarded to him by Captain Despard, which was at complete variance with the story of Kelly. The person who had made the statement was a lad of sixteen or seventeen years of age, and Despard was so convinced of the truth of the story that having taken his depositions he sent him to Dublin.

Under these circumstances it was determined by the Solicitor-General and Blackburne to examine the boy. They did so, and in reply to the question "what he knew about the matter," he said "that he knew nothing; that he had told lies, and nothing but lies, to Despard;" the result was that the old woman and her son became witnesses for the crown, and upon their testimony four or five of the murderers were convicted.

In 1827, Blackburne (then serjeant) conducted in person the prosecution of one of them, and there was this singular circumstance in connection with it, that Mary Kelly, who a few years previously was altogether ignorant of English, and was examined through an interpreter, acquired in the intervening period a knowledge of the language, and gave her testimony for the crown in it. She

was, however, at the time becoming blind, and having shortly afterwards been totally deprived of sight, was unable to identify the remaining murderers, who thus escaped.

We now pass from this painful narrative of guilt. Many years have elapsed since the deed of blood was perpetrated: it is, however, not forgotten. Even now "the burning of the Sheas" is a byword in the country, and has left a mark, the recollection of which, if not indelible, will take many years to efface.

We have already mentioned that Blackburne was appointed serjeant in the year 1826. To the English reader this may not convey the idea of the post being one of distinction, as, until a comparatively recent period, admission to the coif (as it is termed) was merely a necessary preliminary to enable a barrister to practise in the Court of Common Pleas at Westminster. In Ireland, however, it is different. The post of "prime serjeant," to which certain privileges were attached, was abolished many years ago, and there are at present three serjeants appointed by the crown, who rank according to seniority immediately after the attorney and solicitor-general.

The post was offered to Blackburne by Lord

Wellesley, through the late Henry Goulbourn (at the time Chief Secretary), who wrote as follows:—

"DUBLIN CASTLE, *July* 22, 1826.

"MY DEAR SIR,—The appointment of Serjeant Lloyd to the office of Judge of the Insolvent Court having placed at his Excellency's disposal the office of serjeant, the Lord-Lieutenant gladly avails himself of the opportunity of marking his sense of your talents and services by proposing to nominate you to his Majesty for that appointment. It gives me, I assure you, much pleasure to be the medium of communicating to you an arrangement which will, I trust, be acceptable to you, and which gives me an opportunity of expressing my entire coincidence in the Lord-Lieutenant's feelings.

"Believe me, dear Sir, yours ever most truly,

"HENRY GOULBOURN."

On the same occasion, Lord Plunket writes:—

"OLD CONNAUGHT, *July* 27, 1826.

"MY DEAR BLACKBURNE,—Your claims to official promotion have been often the subject of conversation to me and by me. But in the present instance I do assure you that I have no other title to your thanks than that *when your name was suggested*

I expressed my warm and unqualified approbation, as I have done on every other occasion. It gives me great satisfaction that, whilst I see your interest and that of the public served in the proposed arrangement, I have the opportunity of heartily congratulating an old friend, of whose sincere attachment I have for so many years had every reason to be convinced.

"I am always, my dear Blackburne, yours with sincere regard and affection,

"W. C. PLUNKET."

And on the same occasion Lord Clare writes:—

"GRIMSTHORPE CASTLE, *August* 9, 1826.

"MY DEAR SIR,—I cannot hear of your promotion without writing to congratulate not you only, but the bar and our country on such an interesting occasion. I am quite sure that the Lord-Lieutenant could not have selected any one for the vacant serjeantship whose appointment will give more general satisfaction than I am confident yours will to the whole country. I hope that I shall live to see you Chancellor. . . .

"Believe me, yours most truly,

"CLARE."

From the time that Blackburne was appointed serjeant, his business (large before) rapidly increased.

The position in which he was placed by his elevation materially contributed to this result. He confined his practice chiefly to the Court of Chancery, but his services were sought for in all heavy and important cases at law, and we believe that as a special counsel he visited nearly all the assize towns in Ireland.

CHAPTER IV.

Blackburne's personal and professional characteristics.—His appointment as Attorney-General in 1830.—Circumstances under which he took office with Lord Grey.—Appointment of the Marquis of Anglesey as Lord-Lieutenant.—Hostility of O'Connell to the new Administration.—The "Associations" Act.—O'Connell's tactics.—Violation of the Act.—His arrest and prosecution.—Proceedings in the King's Bench.—Subsequent withdrawal of his plea of "Not Guilty."

It may be well, before proceeding further, to give a description of Blackburne, and of the characteristics (some of them peculiarly his own) which led to his great success in his profession. He was about the middle height, and carried himself very erect. His forehead was wide and capacious, but his eyes were the great and striking feature. These were of a dark hazel: keen, bright, and piercing; their expression was at the same time soft, and gave him the appearance of great intelligence rather than of sternness or severity. His voice was naturally musical, and the enunciation of his words beautifully distinct,

while his diction was almost perfect. He never used an unnecessary word. Every sentence might have been printed as it fell from him; and he had the great power, not merely of concentrating his mind on the subject-matter before him, but also the equally rare faculty of being able, in a few weighty and pregnant sentences, to impart to his auditory the ideas which he wished to convey.

He had, too, the power of at once seeing the point of the case—of that of his opponent as well as of his own: in fact what medical men term the faculty of "diagnosis." He used but little action; and trusted more to the effect of his language and articulation upon his hearers, than to the adventitious aids of declamation and of storm. It is not intended, however, to convey by this that he was a tame or unimpassioned speaker. He was quite the reverse. No doubt he, as a general rule, preferred to work upon the minds rather than on the feelings of his hearers; but when occasion demanded it, he showed himself a master of vigorous and powerful language.

As a lawyer, he was intimately acquainted with legal principles, and applied them as it were intuitively to the questions which were brought before him. His services were of course for the most part called for as an advocate; but when they were

required as a conveyancer, the instrument when it left his hands was a model of conciseness and brevity, but at the same time of completeness. It contained no unnecessary verbiage, but it omitted no material statement. His style of conveyancing was very much that of which old Izaak Walton is so much enamoured when he speaks "of those times when there were fewer lawyers, when men might have had a lordship safely conveyed to them in a piece of parchment no bigger than your hand, though several sheets will not do it safely in this wiser age."

After the above was written, we found the following sketch. It was made when Blackburne was Master of the Rolls, but it refers to the period when he was Attorney-General. We are unable to state in what publication it appeared, or who the writer of it was. The description which he has given is so accurate (although some may think it too highly coloured) that we make no apology for inserting it. The "case" referred to was that of Barrett, the editor of the *Pilot* newspaper, and who was subsequently tried with O'Connell for conspiracy in 1843.

"The case was brought before the full Court of King's Bench, the Chief-Justice, Bushe, presiding. The Attorney-General was Mr. Blackburne (now

Master of the Rolls). He had been nominated to his high office by Lord Anglesey. He was acknowledged to be in the first rank of his profession by his bitterest opponents, and there can be no second opinion as to the fact of his singular professional ability. As he was one of the most powerful, so also was he perhaps one of the least flashy men that ever challenged great professional admiration at the bar of Ireland. He had been called to the bar in 1808 [1805], but had been outstripped in the race by many men who had none of his genuine pretensions to forensic eloquence. He had nothing of that quick eager temperament, vehement delivery, vividly brilliant manner, and inflated style, which are popularly associated with the idea of a celebrated Irish barrister. Calm in the hurry of business, he was tranquil under the most violent opposition. Of the middle stature, his appearance was nevertheless commanding, from the stamp of intellect impressed on his penetrating countenance. He had a face which the old Italian masters would have gladly copied. Fuseli said of Lawrence, 'He paints eyes better than Titian.' But if he had seen the large, lustrous eyes of Blackburne, with their calm, penetrating expression, quite free from any furtive character, he would have sworn neither Titian nor Lawrence could paint such eyes. His forehead was

high, wide, and full, his voice was strong and sonorous, his delivery a model of propriety, and his style correct and pure. Few men ever spoke with such briefness: not that he affected a sententious brevity; but, unlike nearly all the other leading lawyers, he was never prolix or diffuse in statement. He never said more than he thought was necessary to produce conviction in an intelligent mind. Even when taken specially to the provincial courts of assize, an hour and a half was a long time for Mr. Blackburne to consume in speaking. He was a perfect model for an equity barrister. Inferior to Mr. Pemberton Leigh in acquired learning, he was fully his equal in legal genius, and certainly his superior as an advocate. There was more demonstrative talent and less studied mannerism in Blackburne. His mind had more volume and natural vigour than that of his great equity contemporary, while his style and deportment were equally remarkable for good taste and calm impassiveness. 'Blackburne,' said one who thoroughly knew his abilities, and had reason to dread their exercise, 'is just the sort of man for counsel to an aristocracy in danger.' His conduct in court as crown prosecutor in Barrett's case was very striking, and presented a contrast to the ordinary demeanour of Irish crown lawyers. He was cool and

collected, and refrained from any attempt to excite the feelings of the jury by declamation."

Although Blackburne did not hold strong political opinions, his views were strictly Conservative. This term seems to have been applied by the late Sir R. Peel to distinguish the Constitutional from the Radical party, and owed its origin, we believe, to a later period; and the names by which the two great parties were known at the time of which we are writing were those of Whig and Tory.

The period had now arrived when Blackburne was about to be called on to take a prominent part in the administration of the affairs of Ireland. In 1830, upon the accession of Earl Grey to power, he was appointed Attorney-General. It becomes necessary, in order to understand the circumstances under which he took office, briefly to review the position of parties, and the general condition of Ireland.

The measure of Catholic Emancipation had not well been passed, when fresh and renewed agitation commenced in England, which took the shape of a cry for reform, the necessary, in fact, the inevitable, result of the Emancipation Act; while in Ireland (to use the words of Alison) "It soon appeared that emancipation had done nothing to conciliate the Catholics, or heal the divisions of the country; it had only

given the leaders a vantage-ground from whence to make fresh attacks on the constitution, and the people an example of the success which might be attained by well-organized agitation. Mr. O'Connell had often declared before the Relief Bill passed, that Catholic Emancipation would convert the great agitator into a mere *Nisi Prius* lawyer; but when it was obtained, instead of keeping his word, he immediately commenced a fresh agitation for the Repeal of the Union. In this crusade he constantly referred to the carrying of the Relief Bill, not as a reason for pacification, or a motive to gratitude, but as an incentive to renewed efforts, and still more vital changes."[1]

The great weapon by which O'Connell had overawed England, and after repeated attacks had vanquished it, was "The Catholic Association." This, like many other organizations of a similar character, had, in its inception, but very small beginnings. A friendly writer, Smiles,[2] states that O'Connell and Shiel, having met by accident in the county of Wicklow, drew up a circular which was sent to the most influential members of their religion. It met, however, with but a feeble response, and with difficulty a

[1] History of Europe, vol. iv., p. 217.

[2] History of Ireland, p. 479.

sufficient number of supporters were collected to enable them to hold a meeting.

It, however, took place, resolutions were passed, and a powerful agitation at once commenced. Subscription lists were opened, the (so-called) Catholic rent set on foot, a press in the interests of the Association established, and, though last, not least, the priests became warm sympathizers with the movement. Its ramifications extended throughout the entire country, and the Association at last assumed such a minacious aspect, that it was deemed necessary, as a measure of precaution, and from an apprehension of the consequences which might otherwise result, to put it down; and accordingly the act of the sixth of George IV., cap. 4, was passed for the purpose. The provisions of the act were, however, evaded, and the abortive attempt to suppress the Association gave it a stronger and more vigorous existence. Its organization became more perfect; and in 1829 the measure of Catholic Emancipation was carried, and owed its success in a great measure to the state of disaffection to which, by means of the Catholic Association, Ireland had been brought, and to the fears of England should she refuse to comply with the demands of the Roman Catholics.

The combined efforts of the Reform party in England, and of the Catholics in Ireland, soon told upon the government. The Whigs rapidly gained ground; and, after a series of attacks in Parliament, the Wellington administration became gradually weaker, and at last succumbed to an adverse vote of the House of Commons in November 1830. Lord Grey became Prime Minister, and although the Whig element predominated in the new administration, it would seem as if (without forming exactly what is termed a coalition government) he was anxious to secure the services of men of different political opinions from his own, because we find that the Duke of Richmond (a strong Tory) accepted office, and that Sir E. Knatchbull, another of the same party, was invited to join the government but declined.

In Ireland the same course was taken, as Mr. Edward Pennefather, to whom allusion has already been made, and whose views were Tory, was offered in the first instance the post of Attorney-General, and upon his refusal it was tendered to Blackburne; Crampton, who was a Whig, having been appointed Solicitor-General. The object which Lord Grey appears to have had in view in making these appointments was, if possible, to satisfy both parties,

by giving to neither a preponderance in the management of Irish affairs.

The Marquis of Anglesey, who had filled the office in 1828, was again appointed Lord-Lieutenant of Ireland. A nobleman of high and chivalrous bearing, he was for the second time about to try his hand in stilling the stormy waves of agitation by which Ireland was tossed. He had, however, at the outset a formidable enemy to encounter. O'Connell, who in the agitation for Catholic Emancipation had shown his power, was determined still to be a thorn in the side of England. The new administration had in addition given him deep cause of offence in the appointment of Doherty to the Chief-Justiceship of the Common Pleas; and he became the implacable enemy of the new Lord-Lieutenant and of the Irish government. Every effort was made to have his Excellency received with coldness, and, we may add, with insult; and with respect to the Chief-Justice of the Common Pleas, matters had proceeded to such a length that personal violence was apprehended, and precautionary measures were taken accordingly.

It was perfectly plain, from such beginnings, that, so far as O'Connell was concerned, the new ministry were not to repose upon a bed of down. The govern-

ment, before passing the Catholic Relief Bill,[1] were by no means assured, and certainly did not trust Mr. O'Connell's promise, that with the passing of the act "the wolf and the lamb would lie down together," for it was considered a wise precaution, and a necessary supplement to the measure (having regard to the state of disorder and agitation caused in the country by the Catholic Association), to pass an act for the purpose of suppressing it and other associations of a similar character, and accordingly the statute of the tenth George IV., cap. 1, was passed, which was entitled "An Act for the Suppression of Dangerous Associations in Ireland." The act was made perpetual, so far as it related to the suppression of the Catholic Association; and the Lord-Lieutenant was empowered to suppress by proclamation any other association which he should deem to be dangerous to the public peace; and as to these latter, the statute was to continue in force for the period of one year from the date of its passing and until the end of the then next session of Parliament.

O'Connell felt that without the aid of a popular assembly, and the publication of its violent and inflammatory speeches, he would be shorn of the power

[1] The "Associations" Bill received the royal assent in March, and the Catholic Relief Bill in April.

which he had before the Emancipation Act, and which had placed him almost above the law; he resolved therefore to evade its provisions—in fact, (to adopt the language of Chief Baron Rice, and which he was very fond of using) "to drive a coach and six through it." Accordingly, in 1829, when the Duke of Northumberland was Lord-Lieutenant, he had formed two or three assemblies, or associations, which had been proclaimed and suppressed, but not until some mischief had resulted.

The arrival of Lord Anglesey in Ireland was the signal for renewed activity on the part of O'Connell; but having been baffled by the action of the previous government, he pursued a different course, viz., that of apparent submission. He evidently thought that by doing so he would be better able to keep alive the flame of disaffection which he had kindled, and obtain from England through her fears those demands which in her calmer judgment she would decline to yield. "Repeal of the Union" was the new war-cry. He had not the Catholic Association at his back—it had been suppressed; but he hoped that by the new plan which he was about to adopt either to weary out the patience of the government or to elude its vigilance.

Blackburne had hardly been appointed Attorney-

General when he was called on to enter the lists and to try conclusions with him. The account of the tactics of O'Connell, and of the subsequent action of the Attorney-General on the part of the government, forms by no means an uninteresting or uninstructive narrative. The followers of O'Connell (and we are not quite certain that he did not himself entertain the same opinion) thought him omnipotent in his power to defy the law; and many in England were of the same opinion. He had, no doubt, yielded to the law on former occasions; but it must be remembered that, although he did so, he never had remained quiet, and that in complying with its letter he completely violated its spirit.

For the reasons which we have already stated, O'Connell determined to take the earliest opportunity to set the government at defiance, and by weakening, to discredit it, and thus make it powerless for good in Ireland. His new tactics were those of apparent submission, and we shall now proceed to explain how this was effected. The act of Parliament provided that it should be lawful for the Lord-Lieutenant by his proclamation to prohibit or suppress meetings of any association which he might deem to be dangerous to the public peace or safety, or any *adjourned*,

renewed, or *otherwise continued* meeting of the same; and accordingly the meeting, whether an original or adjourned one, came within the act, and rendered the participators in it, if convicted, guilty of a misdemeanour. The manner, however, in which O'Connell evaded its provisions (to use Blackburne's words) was as follows: "If the persons who formed his staff (the nucleus of the prohibited association) found that the government had been too quick, and had anticipated them by previously proclaiming and prohibiting their meeting, they met only to dissolve, but, *uno flatu,* assumed a new denomination, and fixed and published its meeting to be held on another day. By this game the government was set at complete defiance; it was a palpable device to evade the law—which every sense of honour, after the passing of the Relief Act, should have made obligatory upon O'Connell and his followers. It became, therefore, on every ground imperative to defeat them, and to vindicate the law. A government that could not do this must have sunk into utter contempt, and, indeed, the evasion had been so often and so successfully adopted that it was believed by some that it was not possible to suppress this association, which, though always consisting of the same persons, professed to yield to the proclamation, while

it endeavoured to resume its operations under another name."

Two or three proclamations thus issued by Lord Anglesey had been contemned and baffled, and the body, consisting of O'Connell and his followers, met under their last name and title at Usher's Quay. There O'Connell told them that "they could not meet, the proclamation having forbidden them to do so, the words of it referring to all the titles assumed at different times, and prohibiting the meeting of the same body of persons under any of them or any other denomination or name whatever." He added, "that after breaking up, they might safely meet at Dawson Street," and they all repaired and met there. Thus there was plain evidence (when they did meet in about an hour afterwards) that they were the very association prohibited by the proclamation, and so there was at last a net in which O'Connell was caught, and by taking this step he supplied the link which was wanting on former occasions.

The great puerility of his device cannot but strike the reader. It was one unworthy of so skilful a tactician as O'Connell. No doubt he had hitherto successfully baffled the government, and by his ingenuity had been able to carry out one of his great objects, which was to show to the ignorant mass of

the people that he was a man who could set the law at defiance, and that its powers were unable to reach him. The mode, however, by which he hoped to elude the government, savours more of the device of a schoolboy wishing to escape from his master than the fair and open warfare of a clever and powerful opponent.

It may be said in answer to this that he was fully aware of the state of feeling in England; that the teaching and influence of the Catholic Association still remained; and that so far as the former and the government were concerned, it was quite sufficient for him, and suited all his purposes, to adopt what at other times and in other circumstances would be considered petty and contemptible warfare. However this may be, the crown was determined to avail themselves of the opportunity which O'Connell had given them, and accordingly he, together with his principal followers, were at once arrested, and held to bail.

This, as may well be imagined, was the signal for every species of attack upon the government, and especially on Blackburne, as Attorney-General, "to whom," O'Connell said, "he would teach law; the proofs in his possession showing that there was no violation of it." Doubts were thus thrown upon the

legality of the arrests, misrepresentations were freely made, and to such a length had they gone, that fears were expressed in England that another Irish blunder had been committed, and there would be as the result a complete failure of justice. An eminent king's counsel (Mr. Wallace), misled by these statements, tendered, in a published letter[1] to O'Connell, his

[1] The following curious correspondence took place on the occasion. Mr. O'Connell, having written to Mr. Wallace to thank him for the offer of his services on the approaching trial, added to his letter the following postscript:—"Your letter is too valuable not to give it publicity; a friend of mine has it in his hand for that purpose. It will appear to-morrow, *without even permission*, but on my sole responsibility." To this letter there came the next day the following in reply:—"STEPHEN'S GREEN, *January* 19, 1831. My dear Sir,—On consideration, I think it better not to publish my letter to you: not that I have any objection to avow my sentiments, but I deem it better, on the whole, that they should appear only on the trial, should the prosecutor be so unwise as to proceed. I beg of you, therefore, not to publish my letter.—Faithfully yours, THOMAS WALLACE. To Daniel O'Connell, Esq., Merrion Square."—O'Connell's reply was as follows:—"MERRION SQUARE, 19*th January*, 1831. My dear Sir,—I do not know whether I was ever more afflicted than I was at the receipt of your second letter. I left a copy of the first with my friend, who awaited my son's return from your house; and as the conversation with you implied no prohibition, but left me to act on my own sole responsibility, without, of course, involving you, he, in my absence, committed it this evening to the press. I was absent at a meeting at Grangegorman Lane, and the moment I returned and found your second letter before me, I sent off to stop the press, but was a full hour too late. Dictate to me what I shall do now. I will in the newspapers take on myself the publication of the letter without

services, asserting that to disobey a proclamation was not an offence at all—plainly misled by the publications in O'Connell's press, which for the purpose of deception had suppressed the fact that the proclamation derived from the statute the force of a prohibitory enactment. On the 18th of January the arrests took place, and on the 25th of January the indictments, containing sixteen counts—two of them for an offence at common law, and fourteen for the violation of the statute—were found by the Grand Jury.

Contrary to the advice of his counsel, O'Connell demurred to them all. The course which he took is almost unintelligible, for the two counts were altogether free from objection, and as the demurrer with respect to them would be overruled, judgment would at once be given against him, and he would be deprived of any chance of a verdict in his favour, as there could be no trial.[1] All preparations were being

your knowledge or consent; I will exonerate you in the fullest and most satisfactory manner from any participation whatsoever in the publication; in short, point out *anything* you wish, and I will do it; and I implore you not to impute this to me as a fault, which I solemnly aver was, under the circumstances, a pure accident. Intreating your forgiveness, offering you all and every atonement in my power, believe me always and for ever your devotedly grateful and sincere servant, DANIEL O'CONNELL. To Thomas Wallace, Esq."

[1] For the information of non-legal readers it may be well to state that the reason why this is so is that in the case of a mis-

made for the argument of the demurrer; books had been provided for the judges, and a day fixed for argument, when O'Connell, feeling the predicament in which this ill-considered step had placed him, applied to the court to withdraw his demurrer, and to be allowed to plead to the indictment. The application was opposed by the Attorney-General on behalf of the crown upon various grounds. The demurrers were, however, permitted to be withdrawn, the defendants having been put under terms, and notice of trial was served for the 17th of February. In the meantime, however, O'Connell, finding the game played out, applied for leave to withdraw his plea of not guilty to the counts of the indictment which charged him with an offence under the statute. The Attorney-General assented to the application, and entered a *nolle prosequi* on the other counts. He said in doing so, "From the circumstance of withdrawing these pleas, I shall be entitled to judgment on these fourteen counts. That judgment will be abundantly sufficient to answer all the objects of this prosecution, and to effectuate the important ends

demeanour (which was the character of the offence with which O'Connell was charged) the demurrer admits the facts, but disputes the legality of the proceedings; and therefore if the defendant fails on the argument, the decision operates as a conviction. In what are termed felonies the rule of law is different.

of the administration of justice. I therefore on the part of the crown think it unnecessary, and therefore unjust, to prosecute the remaining counts of this indictment. I will therefore enter a *nolle prosequi* upon them." O'Connell had at last been overcome—the law had triumphed; and, what was of no small importance in the disorganized state of Ireland, the people were shown that their great idol —one to whom they looked up as all-powerful—was within the grasp and power of that law which he had so recently set at defiance.

CHAPTER V.

Gratification of the government at the unexpected result of the O'Connell prosecution.—Charge of collusion against the government.—Mr. Stanley's denial in Parliament.—The Attorney-General's statement.—O'Connell not called up for judgment.—Misrepresentation of Lord Cloncurry in his "Personal Recollections."—Mistake of Alison in consequence.—Blackburne's letter to the latter.—His reply.—Additional account of the circumstances which led to the escape of O'Connell.

THE government were in great delight at the successful termination of the O'Connell affair, which, whatever might have been the opinion of the Attorney-General, was not generally anticipated.

Mr. Stanley writes as follows :—

"IRISH OFFICE, *February* 14, 1831.

"MY DEAR SIR,

"My best thanks and congratulations on your great and triumphant success. Nothing can have been better or more successfully managed ; and we certainly

owe it much to your exertions and *decision* that we have O'Connell so far at our mercy as we have. I attach the greatest importance to the having shown a determination to grapple with him in the first instance, and to having proved that even in these times the law, ably and judiciously made use of, is too strong for him. He will be here, I doubt not, speedily, and I trust he will not get out of our hands more easily or more creditably than he has done out of yours. I expect to hear him in a very subdued tone when he comes into the House, and I hear that he is alarmed at the tone taken by O'Gorman Mahon. All has gone on so well hitherto that I will not express any fears for the future; but I confess I look with great distrust on any evidence given by 'Z.'; [1]

[1] This refers to a scheme which was meant to deceive the government, and, by giving false information, to throw discredit upon it. Letters with the signature "Z." were addressed either to Mr. Stanley or to the Attorney-General, in which the writer stated the existence of a formidable conspiracy, which was hatched by associated Roman Catholics, against the lives and liberties of Protestants. The informer refused to give any further information in writing, stating that he would at a personal meeting give full details; but that his own safety from assassination required that any conference with him should be strictly private, and after dark. It was arranged therefore to see him at the Castle, at twelve o'clock at night, and Mr. Stanley, together with the Attorney-General and Major Sirr, had an interview with him. He told a most plausible story, and entered into minute details with respect to the con-

and did I not know that the result of your personal interview with him had been an equally strong impression on your mind, as on mine, that he was not to be relied upon, I should have felt afraid of any steps being taken on his information only. However, I feel quite assured that you will not take any hasty steps in this measure, nor act unless you have strong grounds for expecting success, and we have every reason to rely with implicit confidence upon your judgment of the probabilities. I am glad to hear Crampton acquitted himself so well. We shall want him much in Parliament, and I hope he is, or soon will be, on his way to join us. He should be here soon after O'Connell. Lord Grey and Lord Melbourne are both delighted at your victory, as indeed who is not?

spiracy, the object of which was to overthrow the government and massacre the Protestants. He further informed them that a meeting of the directory was to be held in their rooms on the next day in a house near Essex Bridge, at which they would have all their books and papers; and that with a strong military force, assembled at the Castle, to make a sudden attack upon them, they could be easily seized with the proofs of their guilt. After three hours spent in hearing the details, they determined at once, from the extreme improbability of his story, coupled with a demand for money (always a suspicious circumstance), to have nothing to do with him. They did not, however, tell him so at the time, but had no further communication with him. His object was twofold—viz., to obtain money, and also to involve the government in the discredit and ridicule which a military display on Essex Bridge would not have failed to excite.

Your letter, with two from Lord Anglesey, are just gone down to the king.

"Believe me, dear Sir,

"Yours very sincerely,

"E. G. STANLEY."

The sudden and unexpected termination of the O'Connell prosecution took not merely the Irish but the English public by surprise. Great apprehensions had been entertained (as we have already stated) that it would fail—that the cause of disorder would again prove successful, and that this result would give a great triumph to O'Connell, and seriously imperil the cause of tranquillity in Ireland. Accordingly a rumour was set afloat that the government and O'Connell had entered into a compromise.

The mischief produced by this report was great, and called for a speedy remedy; and accordingly Lord Anglesey wrote:—"My dear Attorney-General, There is so barefaced and mischievous an attempt to give a false colour to the proceedings of yesterday, that some immediate and decisive course should be adopted to disabuse the public mind, both in Dublin and throughout Ireland. Pray think of this last immediately.—A.—Sunday." And Mr. Stanley

was asked the question in the House of Commons, to which he gave a distinct negative, reading at the same time an extract from a letter of the Attorney-General's, in which, after stating that on the previous Friday he had given Mr. O'Connell notice that he could not consent to fix a later day than the 17th of February for the trial, he adds, "that notice led to a verbal message from Mr. O'Connell requesting that I would postpone the trial till the next term, to which I answered that I could only receive communications in writing. Accordingly on Friday evening he wrote to make the same request, when he received a peremptory refusal to put off the trial. It was not difficult to collect from this, that Mr. O'Connell would not venture to encounter a jury, and I felt at the same time convinced that he would plead guilty. I afterwards saw Mr. O'Connell's legal advisers,[1] and told them that neither time nor terms

[1] The following is the Attorney-General's account of the interview:—"On the 12th of February, I met Perrin at a quarter-past eleven, and told him of O'Connell's application to me, and then told him that I could not suspend the prosecution for an instant—that even if I wished to do so I could not; for that by doing so the government would forfeit the confidence and support which its vigorous assertion of the law had procured for it, and that to enter into any sort of terms would, in my opinion, be more injurious to the government than the event of a trial, even though there was no verdict, or an acquittal. I then said that I would candidly state to him my views, premising that the end of this prosecution,

would be granted; but as I must have obtained the judgment of the court had the demurrer been argued, which was most desirable, was not punishment, but the restoration of tranquillity; that I felt that I had lost an advantage by the order of the 5th of February, and that if I had not done so, and had judgment on the counts demurred to, it was my intention to have entered a *nolle prosequi* on the other counts, and have entered judgment on the first fourteen counts; that I retained the same view that this would be sufficient, and that therefore I would accept pleas of guilty to those counts, and give up the others; but that I neither had power, nor had the government the power or disposition, to make any terms with a man who could not be trusted; that an unconditional judgment on the first fourteen counts I would insist on, and it was for O'Connell to consider whether he and his co-defendants who had also demurred would give me this, and take their chance as to terms at the other side of the water. Perrin objected to pleas of guilty, as they might preclude a writ of error. I said I did not want him to deprive his clients of a writ of error, as judgment by default, for want of pleas, would answer my object as well as such pleas. He then went to confer with Mr. O'Connell, and returned, saying that O'Connell had acceded to my proposition, and he was sure the other defendants would do the same. I went down stairs and left Perrin and Greene (*a*) to

(*a*) The late Right Honourable Richard Wilson Greene, at the time law adviser. He subsequently held the offices of Serjeant, and of Solicitor and Attorney-General. In 1852, he was appointed Baron of the Exchequer, which post he filled until 1861, when he was compelled by failing health to resign. A lawyer of deep and varied learning, he was one of the great ornaments of the Irish Bar, while his high character and the kindness and sweetness of his disposition made him universally respected and beloved. He was (as has been already stated) one of Blackburne's schoolfellows at White's. The acquaintance thus early formed ripened into a firm and lasting friendship, and death alone severed the intimacy which subsisted between them.

and as I should then have entered a *nolle prosequi* on the other counts, they being only subsidiary to the first fourteen counts of the indictment, I was willing to be satisfied with a conviction insuring me the same extent of advantages that I felt the Court of King's Bench would have given me on the argument on the demurrer." The letter of O'Connell to which he alluded was as follows:—

"MERRION SQUARE, *February* 11, 1831.

"SIR,

"The public and private information which I have received from London this day, impresses on me very strongly the necessity of my attendance in Parliament in discharge of my duties there—so urgent does that necessity appear to me, that I take the liberty of stating it to you, with as much of request as may be consistent with your official situation, that the trial of myself and the other gentlemen, may stand over until the next term, provided there be nothing in such postponement inconsistent with

commit the matter to writing, and it was done without reference to any terms whatsoever. Perrin, on his return, said that O'Connell had asked him and Holmes 'if they would advise him to accede to my offer?' They replied they would; and he then asked them 'if they thought that in doing so he would act in a manner derogatory to his character?' They replied 'he would not;' and that Holmes had given him some advice about giving up agitation, and not to go to Kilkenny.'"

your views of the interests of the crown and the public. All the traversers concur in this wish, but it is one which I express only in one case, namely, that you see nothing in the delay inconsistent with what your office demands from you in the most rigid performance of your duty. I have only further to add that it is totally unnecessary for you to send any written reply to this letter. Indeed, I do not desire any other than a mere signification by the Crown Solicitor to my law agent, either that duty *allows* or *forbids* you to comply. I owe you an apology for this intrusion: that apology is to be found only in my conviction that my duty to my constituents requires my presence at this time in the House of Commons.

"I have the honour to be, Sir,

"Your very obedient Servant,

"DANIEL O'CONNELL."

Mr. Stanley replied to Blackburne's letter by the following:—

"IRISH OFFICE, *February* 17, 1831.

"MY DEAR SIR,

"Many thanks for your satisfactory letter of yesterday, which gave me an opportunity of explain-

ing to the House the circumstances of the case, and has placed us upon velvet. In the event of any misrepresentation being attempted to be made, you have brought us through most triumphantly, but it is quite clear from what has passed, and the tone O'Connell still takes, that he is one with whom we can enter into no terms, and that we must press for judgment against him at all events. Of this I feel the necessity, and I think he must feel it also. I hear a *report* that he is in town, but have not seen him. . . . . I hope you will excuse my having read an extract from your letter; it was more satisfactory than anything else, because it gave an air of openness, and anxiety that full information should be afforded.

"Believe me, dear Sir,

"Yours very sincerely,

"E. G. STANLEY."

The sequel is soon told. O'Connell could not be called up for judgment until the following term, when the case was, with the Attorney-General's consent, postponed until the ensuing month. Parliament was, however, in the meantime, suddenly and unexpectedly dissolved, and the act under

which he was indicted expired, and thus an end was put to the proceedings.[1]

The O'Connell press, it is almost unnecessary to say, was not silent while the proceedings were pending. Vituperation was freely bestowed on the government, and accordingly the Attorney-General applied for a conditional order against the *Morning Register*, one of the principal delinquents. In making the application he said, "I take this occasion with respect to the press to say, that there is no man less disposed than I am to abridge its liberty, or to mark with severity its occasional excesses, or even licentiousness. But different from this is the case when the press, instead of being the instrument of freedom, is used for the purposes of despotism and tyranny; and in the case before the court, I feel that the power of the press has been prostituted to these purposes. Nothing, my lords, can be more

[1] In "Dwarris on Statutes," vol. ii. p. 670, it is laid down "that if an act be penal and temporary by the terms or nature of it, the party offending must be prosecuted and punished before the act expires, although the offence should have been committed before the expiration of the act. The party cannot be punished after it has expired unless a particular provision be made by law for the purpose." (In the statute under which O'Connell was indicted there was no such provision). The following are, we believe (if not the only), the principal authorities on the subject:—"Hillier's case 1, Wm. Bl. 451; Rex *v.* McKenzie; Rus. & Ry. 429; 1 Hale Pl. Cor. 290." They are not referred to by Dwarris.

despotic or tyrannical than for the press to attempt to defeat the administration of justice, and overawe those whose duty it is to administer the law of the land."

This we take to be the true view of the liberty of the press, which, while it admits the great (we would add) the inestimable advantages of a free press, and that freedom bordering on licentiousness should be permitted, rather than that its privileges should be in any manner curtailed, yet insists upon the sacred avenues of justice being jealously guarded, and any interference with the due administration of the law firmly and courageously resisted.

As an instance of the game of bravado which O'Connell played we give the following. He was bound to appear in person each day in the Court of King's Bench during the progress of the proceedings. He determined to set the law in this respect at defiance, or, at all events, to try to do so, and accordingly on the 31st of January, a few days after the bills of indictment had been found, it was publicly announced that he would take his departure from Dublin to attend his parliamentary duties. A great concourse of people assembled at Ball's Bridge (a village at a short distance from town) to escort him. The members of the various trades, decked out with

banners and flags, and wearing scarfs, poured forth from their places of rendezvous, and accompanied by a miscellaneous multitude, followed him to Kingstown. When he arrived at the landing-place, he was served with a notice requiring him to appear the next morning in the Court of King's Bench, and was obliged to announce to the people, to his great chagrin, that he was compelled to postpone his departure. The saddest part of the story remains. The season was exceptionally cold, and the unfortunate people who had travelled the distance on foot, were, on their return, overtaken by a snowstorm which lasted for a considerable time, and some lost their lives by exposure to the severity of the evening.

Before leaving the subject of the O'Connell prosecution it is necessary to advert to a misstatement of the late Lord Cloncurry's in his "Personal Recollections." After referring to the various contrivances by which O'Connell attempted to evade the provisions of the "Proclamations" Act, and to a collision which "produced a personal estrangement" between them, he adds,[1]—"It did not, however, prevent the occurrence of a warm altercation between the Attorney-General, (now Chief-Justice) Blackburne, and me upon his

[1] "Personal Recollections of Valentine Lord Cloncurry," p. 421.

(O'Connell's) account. When he was brought to trial under the 'Proclamations,' or, as he called it, 'the Algerine' Act, he pleaded guilty; but the term at which in the ordinary course he should have been brought up for judgment did not arrive until within a month or two of the expiration of the statute, and then I strongly urged upon Lord Anglesey the prudence of allowing him to escape, as the nominal infliction of a punishment, which could only endure for a few weeks, would only have the appearance of impotent malice; and while it might have created dangerous popular excitement, would but have added to his exasperation, and have given him a triumph upon the event of his liberation that must so speedily follow. Mr. Blackburne thought differently, and the dispute ran so high that Lord Anglesey thought it necessary to pledge both of us to proceed no farther in the matter." To this passage Blackburne has appended the following:—"It is very true, as Lord Cloncurry says, that he, while the proceedings were going on, and before O'Connell withdrew his plea, gave this advice, which it would have been a disgrace to have followed—true, also, that I would not have followed it, though all the members of the government might be disposed to do so—but, in fact, I alone was consulted by Lord Anglesey,

and my opinion prevailed. But it is utterly untrue that any altercation took place between me and Lord Cloncurry, or that Lord Anglesey ever exacted such a pledge as is stated, or any other whatever."

In consequence of this misstatement of Lord Cloncurry's, Sir A. Alison, in his "History of Europe," has fallen into an error with respect to the true state of things as regards the O'Connell prosecution. He writes[1]:—"Mr. O'Connell withdrew his demurrer, and actually pleaded guilty to some counts of the indictment. This was so unexpected a result that it naturally created a suspicion of some secret understanding or agreement with the government. Mr. Stanley, however, the Irish Secretary, upon being questioned on the subject in the House of Commons, emphatically denied that there was any understanding, and declared in the most solemn way, 'It is the unalterable determination of the law officers in Ireland to let the law take its course against him.' But in making that declaration, that highly gifted nobleman was not yet aware of the degradation which sooner or later awaits all who, for political purposes, ally themselves with popular demagogues. *O'Connell was never brought up for judgment.* The Reform Bill was coming on in the House

[1] "History of Europe," vol. iv. p. 299, 1st ed.

of Commons, a general election might at no distant period be anticipated—the support of the Catholic leaders in and out of Parliament might be required by the government, and the haughty spirit of Earl Grey yielded to the necessities of his situation. Nothing was done against O'Connell; he openly braved and abused the government; but he and his party supported them in Parliament, and he and his associates were permitted to carry on for fifteen years longer their unchecked career of agitation, devastation, and ruin;" and to this passage the following note is appended: —"The crown has procured a verdict against Mr. O'Connell, and it will undoubtedly call him up for judgment. *Mirror of Parliament*, 1831, p. 281." —"Such were Mr. Stanley's words, in which he was undoubtedly sincere, but he was overruled by the Cabinet. The excuse put forward for this discreditable act, viz., that the act under which O'Connell had been convicted expired before he could be brought up to receive judgment, is unfounded both in fact and law. He pleaded guilty on February 5th, and the Parliament was dissolved on April 22nd, and every lawyer knows that though an act of Parliament may be temporary in its duration, the punishment of a crime committed while it was in force may be inflicted or continued long after.

In truth, the whole affair was a mere compromise of justice for expediency, or rather, party ambition, and it was discussed as such in the Cabinet of Dublin, and produced an estrangement between Lord Cloncurry and Mr. O'Connell, and such a violent altercation between the former and the Attorney-General (Blackburne), who insisted for punishment, that the Lord-Lieutenant was obliged to take a pledge that it should go no farther," and he then quotes the statement of Lord Cloncurry to which we have already referred.

These statements appearing in a work of such a character as the "History of Europe," were calculated in the highest degree to injure not merely the political reputation of Lord Grey, but also that of the late Earl of Derby, at the time Mr. Stanley, and accordingly Alison's attention was called by Blackburne to the mistakes into which he had fallen, and we shall quote a few of the passages in his letter, and Sir A. Alison's reply.

In alluding to the question whether O'Connell could have been called up for judgment after the expiration of the statute, he writes :—"Here I am at issue on the question of law with the author. Differing from so high an authority, I am bound to say that if I was in error it was after most anxious deliberation,

and a minute and laborious investigation of the authorities, in which I had the invaluable aid of the able and learned Mr. (now Baron) Greene." With respect to the other portion of the charge, against the government, viz., that Lord Grey was compelled by the political exigencies of his situation to yield, after stating that O'Connell could not have been called up for judgment until the ensuing term, he adds,—"The matter, therefore, of necessity stood over until the next term. The court sat on the 20th of April.[1] Prior to that day, neither directly nor indirectly, had I received any intimation of an intention or wish of any member of the government, English or Irish, that the law was not to take its course. It is true that before Parliament was dissolved, two or three days of the term had elapsed, of which I, as Attorney-General, did not avail myself to call for judgment. For this delay I was alone responsible. What the cause of it was I cannot now remember, but I positively assert that it neither arose from any instructions to me nor any intention on my part to abandon the prosecution. Indeed this would have been impossible after Lord Stanley's declaration."

[1] This was according to the old practice. The alteration in the days for the commencement of term did not take place in Ireland until 1832. *Vide* 1 and 2 Wm. IV., cap. 31.

The following is Sir Archibald Alison's reply :—

"ATHENÆUM CLUB, LONDON, *June* 6.

"MY LORD,

"I have this morning received your lordship's favour of the 5th, with the observations on my account of Mr. O'Connell's prosecution, in the fourth volume of my history. You need make no apology for sending me that statement, for which I feel deeply indebted. It is one advantage attending the labours of those who adventure upon contemporary annals, that they often elicit from those familiar with public events statements which otherwise might have remained unknown. I am well aware of the ability and zeal with which the prosecution of Mr. O'Connell was conducted by the law officers of the crown in Ireland, and if there is any expression in my pages which conveys an opposite impression it was unintentional, and I much regret it. My object was to show how the whole evil arose, not from any fault ascribable to yourself or the Solicitor-General, but to the democratic pressure on the Cabinet. I shall carefully revise my account of this affair with your notes, and make the requisite corrections. I am already engaged in correcting it for a new edition, and I only regret that the magnitude of the first, which was 5,000 copies, should have disseminated anything incorrect over a

wide surface.—I have the honour to be, my Lord, with much respect, your obliged and faithful Servant,

"A. ALISON."

We are able to supply the facts which Blackburne had forgotten with respect to the circumstances under which the postponement of judgment took place. We have already stated that the pleas of "Not guilty" were withdrawn on the 12th of February, but the traversers could not be called up for judgment until the following term. In the meantime, in order to inform the court of the precise charges which it was intended by the crown to have brought against them had the trials proceeded, and with a view to enable the former to measure the amount of punishment, affidavits were filed setting out the facts which the crown intended to have proved. Accordingly on the first day of Easter term, O'Connell, with the other traversers, were called on their recognizances. He did not appear, one of his counsel giving as a reason for his absence that he was discharging his parliamentary duties. Some of the other parties were, however, in attendance, and with the consent of the Attorney-General, an early day in May was fixed for hearing a motion in arrest of judgment, and of disposing of the case.

To explain what subsequently occurred, we must

briefly refer to the political condition of England at that time.

Upon the resignation of the Duke of Wellington, Lord Grey assumed the reins of government, pledged to a moderate measure of reform, and early in the session, a bill on the subject was introduced by Lord John Russell, which, however, having had the misfortune to please nobody, was withdrawn. The government, however, feared that it had but little chance of carrying any measure of reform in the existing state of things, and determined on a *coup d'état*, and by a dissolution of Parliament, whose existence had been but brief, to strengthen the hands of the administration. To quote the language of a contemporary writer:[1]—"In 1831, Lord Brougham, in a misrepresentation still more gross than Sir Harry Vane's, stated in Parliament, and, it is said, even in the king's closet, that the House of Commons had refused the supplies, and in consequence, as is generally believed, of this strange misstatement, his majesty, towards the end of April dissolved his Parliament in circumstances of such haste and hurry as (quoting from Clarendon) showed that it was *apprehended that the House of Commons would have entered upon some ungrateful discourse.*"

[1] "*The Quarterly Review*," vol. xlvii. p. 27.

It is plain that a stroke of policy so suddenly and so secretly decided upon was not communicated to the Irish government, and that the Attorney-General, at the time that he assented to a postponement of the motion until the following May, was in complete ignorance of the state of affairs on the other side, and of the necessity of having O'Connell at once called up for judgment.

We now leave this part of our subject. We do not think that an apology is necessary for having devoted so much space to it. The history of the O'Connell prosecution is not only interesting in itself, but also forms an important feature, not merely in Blackburne's political career, but in that of O'Connell, who, for the first time, felt that with a man of firmness and determination he was powerless. The prosecution, too, dispelled the idea of his absolute power and infallibility,—he was proved to be not superior to the law, nor so powerful as to deter the government from asserting it against him. And although O'Connell subsequently regained his ascendency in Ireland, the mischief from a seditious Parliament meeting in Dublin no longer existed, and when a new species of agitation arose, he did not venture to place himself within the power of the law which he had previously set at defiance.

CHAPTER VI.

Disturbed condition of Ireland.—Anti-tithe agitation.—Short account of the conspiracy formed for the purpose of resisting the payment of tithe.—Special commissions issued for the counties of Limerick, Clare, Roscommon, and Galway.—Anti-tithe outrage at Newtown Barry.—Important letter of Mr. Stanley with respect to O'Connell, and Irish affairs generally.—O'Connell given a patent of precedence.—Insurrectionary riot and murders at Carrickshock.—Trials at Kilkenny.—Failure of the Crown to obtain convictions. — Report of the Attorney-General to the Lord-Lieutenant.

THE agitation which O'Connell had fostered, soon bore its fruits. The state of Ireland, or at least of parts of it, justified the greatest apprehensions. Indeed, it is difficult to say when the country could be said to be otherwise than in a state of insurrection.

From the period of the passing of the Catholic Emancipation Act, crime had steadily increased, and the remark of Spenser seems to have been almost prophetic, where, in his "View of the State of Ireland,"[1] and in reply to Eudoxus, who "wonders

[1] "A View of the State of Ireland, as it was in the Reign of Queen Elizabeth," by Edmund Spenser, p. 1.

that no course is taken for turning to good use that country of Ireland, and reducing that nation to better government," Irenæus answers, "Marry, so there have been divers good plots devised, and wise counsels cast already, of reformation of that realm; but they say it is the fatal destiny of that land, that no purposes whatsoever which are meant for her good will prosper or take good effect; which, whether it proceed from the very genius of the soil, or influence of the stars, or that Almighty God hath not yet appointed the time of her reformation, or that He reserveth her in this unquiet state still for some secret scourge, which shall by her come unto England, it is hard to be known, but yet much to be feared." Catholic Emancipation had been granted by England with the full assurance that peace and tranquillity would quickly follow upon the footsteps of the "healing measure," as its advocates and supporters were in the habit of styling it. In this she was doomed to be grievously disappointed.

The advent of the Grey administration was (as we have seen) inaugurated by O'Connell's setting the example of open defiance of the law, while throughout the country—*i.e.* the southern and western portions of it—a crusade was commenced against

the rights of the tithe-owners, and indeed against those of property generally. The priests and people entered into a combination to resist the law, and the country was reduced to a state of anarchy and rebellion.

We do not intend to refer at any length to the anti-tithe insurrection which raged so fiercely in Ireland during the period when Blackburne was Attorney General, but our subject would be manifestly incomplete without some allusion to it. Alison[1] says: "But all subjects of anxiety sink into insignificance in the British empire after the Reform Bill had passed, compared to that furnished by the distracted state of Ireland. That unhappy country, the victim in one age of British injustice, in another of British indulgence, had only become more distracted with every concession made to its demands. Confusion and threatened rebellion," says the annalist, "had no sooner accomplished Emancipation, then it commenced the same work to destroy the Established Church. The same organised tumult, and menaced dissolution of the bonds of society, which had been employed to open the doors of Parliament and of the government offices in 1829, was directed to batter down the Church in 1831

[1] "History of Europe," vol. v., p. 344.

and 1832. One demand conceded immediately became the parent of a new one, and agitation, like love, had an appetite which grew by what it fed on."

The crusade against the Church, alluded to by Alison, developed itself in the form of a widely-organised resistance to the payment of tithes. Meetings were held, and a combination entered into, not merely to resist the demands of the tithe-collector, but by a system of terrorism, to compel others, through fear of consequences, to refuse payment.

It was a conspiracy against the government, not less than against the clergy. Mobs were organised, against which even men of rank and property were unable to make a stand, because if known to be hostile to the agitation, or to have paid tithes, they were at once placed under the ban, and severely punished. Their own men refused to work for them, and others could not be induced to take their place. Potatoes remained undug, cows unmilked, and crops were left to perish uncut. The very mail contractors, if suspected, could not find men to change their horses, or to give them water. If cattle were distrained for the payment of tithes there were no bidders at the

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sale, or if, as happened on one or two occasions, any were found, they became objects of execration and persecution, and bitterly repented their having had anything to do with that which, so far as they were concerned was "an accursed thing."[1]

Such (as regarded the anti-tithe agitation) was the condition of things in Ireland in the years 1831 and 1832. The position of the unfortunate clergy was pitiable in the extreme. The firm resistance to the payment of tithe having set in, starvation fell on a body of educated and inoffensive men. The combination worked by the priests was perfect, and every device set on foot, by which the action of the law might be baffled, and the payment of tithes successfully resisted.

We may add that although the "tithe grievance," as it was styled, may have been in some cases a legitimate ground of complaint, it was in many instances an imaginary one. In the hands of the agitators, however, it was an admirable weapon for keeping alive an angry spirit in the country, and by working on the fears of England extorting from her further concessions. Alison writes:[2] "It is a very curious circumstance, strikingly illustrative

[1] *Vide* "Annual Register," 1832.

[2] "History of Europe," vol. v., p. 352.

of the foreign and sacerdotal influence at work at getting up this" (the tithe) "disastrous agitation and resistance to the law, that owing to the extreme subdivision of the land in Ireland, the tithe, though paid by the peasantry, was in most cases a burden hardly perceptible. In the parish of Carlow, the sum owing by 222 defaulters was a farthing each. In some cases the charges upon land amounted to $\frac{7}{10}$ths of a farthing. Mr. Littleton, the Irish Secretary, stated in Parliament that the smaller sums were often paid by three or four persons, and the highest aggregate charge was against those who owed individually about two pence. The impost, therefore, was perfectly trifling, and proved no real burden upon the people. They were miserable enough, but not owing to the tithes, but to "an entirely different set of causes, which the agitation tended to aggravate."

The necessities of the times were urgent, and it was therefore determined by the government to anticipate the period of holding the ordinary assizes, and to issue in the year 1831 special commissions for the counties of Limerick, Clare, Galway, and Roscommon. The special commission opened in Limerick, in the month of May. The weight and number of the cases to be tried there were,

however, so great, that after a portion of the business had been disposed of it had to be adjourned.

The country had become thoroughly demoralised. The Attorney-General, addressing the court at the termination of the commission at Limerick, drew a painful picture of the falsehood and treachery (we might use much stronger language) of the people. He said, "You are not aware that at this moment (I shudder while I speak of it) I could have indicted a man in that dock, and produced the brother to take away his life. I could have done it, but where the laws of the country could have otherwise ample vindication, I would not commit an act to outrage the laws of nature and humanity."

The firm attitude taken by the Crown through its Attorney-General brought for a time to those counties where the commissions had been held comparative tranquillity. This was, however, a result which seems to have been scarcely anticipated by the government, for Lord Anglesey thus writes :—

"PHŒNIX PARK, *June 5th*, 1831.

"DEAR ATTORNEY-GENERAL,—Let me congratulate you upon your great success, and upon your able and luminous speeches. So truly important is *your*

management of the intricate proceedings in the disturbed districts, that I feel it my duty to urge you not to give over your charge into probably weaker hands, but to proceed yourself with the prosecutions in Galway and in Roscommon. Should these measures forwarded by your able exertions succeed in restoring order, I shall consider it as the greatest triumph achieved by plain sober law, patiently but firmly administered over combination and outrages the most mischievous that are upon record.

"Believe me, dear Attorney-General,

"Very truly yours,

"ANGLESEY."

And—

"PHŒNIX PARK, *June 6th*, 1831.

"MY DEAR ATTORNEY-GENERAL,—I again send you my warmest praise and congratulations. You have surpassed yourself, and I beg to express, as forcibly as words can do it, my high sense of Mr. Barrington's valuable exertions and also those of your other assistants. . . . Although I wrote yesterday to press you to proceed to Galway and Roscommon, still I beg you to understand that I leave it entirely

to your discretion and better judgment, and that I shall be perfectly satisfied with your decision.

"Being most truly yours,

"ANGLESEY."

And Mr. Stanley writes:

"PHŒNIX PARK, *June 8th*, 1831.

"MY DEAR SIR,—I have not hitherto troubled you with my thanks for the several most satisfactory reports you have forwarded of the progress of the special commission. It exceeds our most sanguine hopes, and I have ventured to write to the Government at home that it will probably *not* be necessary to apply to parliament for any extraordinary powers. Indeed, if juries do their duty, we can have no excuse for a military tribunal. I suppose it is completely understood that if there are any cases brought in for Clare while the commission is in Galway and Roscommon, one of the judges, at all events, should return to Ennis immediately to try them. I am convinced this will have the best effects, and from the distrust that now prevails so generally among the insurgents there is every reason to suppose that a second

crop of cases may have accumulated, which it may be well to deal with at once. Nothing can be more mischievous than the tone of O'Connell's speech, but I hope the sting is rather taken out by his complete failure. Sir Thomas Arbuthnot writes word that in Steele's there was not a word to complain of, but that O'Connell's attacks on the juries were diabolical. I will write by this day's post to the High Sheriff of Clare, to commute the sentence of the eight men to transportation for life, and also to take instructions from you as to the departure from time to time of the other convicts. I had some conversation yesterday with the Lord-Lieutenant, who quite concurs in the view taken by your letter of to-day against the necessity of any extraordinary severity being practised on this occasion; on the contrary, we do not think it would be impolitic, *having secured the upper hand*, to pass lenient sentences. In cases of murder and for aggravated assaults accompanied with violence, we must probably make some examples, in the first certainly, if we obtain convictions, of which I have no doubt. I am only sorry that you are going on to Roscommon and Galway, as I shall probably miss seeing you before I go up to town, but I am sure it is for the public advantage that you shall

continue to attend the commission. I am sure Lord Anglesey in writing to you, did not use terms too strong to express the sense we both of us entertain, of the assistance we have derived from you ever since you took your present troublesome and responsible post; I do not know how we should have got on without you. Before you return I hope you will have some conversation with Barrington, to whom I am much obliged for the constant details he has sent me upon the proposed change in the Whiteboy Code, and let me have your opinion in writing, if I do not see you, as soon as possible after I get to town. Perhaps it would be as well if you were to cause Greene to draw a bill under your direction, which you can send up for further consideration in England, I will then see the Chancellor and the Solicitor-General upon it. Notwithstanding O'Connell's petulance, I am inclined to give him a chance thus far—that I should not introduce again the Proclamation Act (by the way this is rather a child of the Chancellor's, to which I see he has a lurking attachment) nor substitute the 'Seditious Meetings' Bill,' but let us try how matters go on without either. The interval now between the end of the session now approaching, and the commencement of the next, will probably

not be long enough to enable him to do much mischief (while parliament is sitting I am not afraid of him), and if he shows any disposition to excitement, it gives us a ground to say that forbearance has been tried and failed. The 'Arms Act' is ready and I shall introduce it immediately. The 'Martial Law Bill' is also ready, but I hope not wanted. I wish you continuance of your present success. I can wish you no more.

"And believe me, my dear Sir, yours faithfully,

"E. J. STANLEY."

The Special Commissions do not, however, appear to have had much effect, by way of example, in repressing disorder and crime in other parts of the country. At Newtown Barry, in the county of Wexford, a fearful affray took place, the circumstances of which are thus detailed in the letter of the Under-Secretary to the Attorney-General:—

"DUBLIN, *June 28th*, 1831.

"MY DEAR ATTORNEY-GENERAL,—I am glad you are proceeding so well in your work, and wish I could give you good accounts from other quarters, but I regret to say far from it. A most lamentable affray has taken place at Newtown Barry. I have received

two accounts of it: one states that a sale of cattle, distrained for tithes, was rescued; the police recaptured it, and put it in a pound outside of the town. A magistrate who was with the police, finding an overwhelming mob pressing hard upon them, went into the town, and brought out 150 yeomanry, who had been kept ready in a yard in case of their being wanted. A volley of stones was thrown by the mob at the yeomanry and police. Thus far, I believe that this will be found to be the fact. One account states that shots were fired by the mob, and some of the yeomanry wounded *before* they fired. The other account makes no mention of any shot having been fired by the mob. There are thirteen or fourteen people killed and twenty-three wounded. This includes a yeoman killed and several wounded, but whether by ball or stones is not ascertained. Greene went down last night to investigate the matter. It is *most unfortunate*, let it have commenced as it may.

"Yours very truly,

"W. GOSSET."

For some short time after this affray there appears to have been a lull, as Mr. Stanley writes:—

"*Private.*

"IRISH OFFICE, *October 22nd*, 1831.

"MY DEAR SIR,—I hope that by this time the Archbishop's business is satisfactorily arranged, as the new king's letter was sent off on Thursday. . . . I really hope, from all that I can hear, that there is a fair prospect of tranquillity in Ireland during the recess. And even this breathing time could be cheaply bought by a silk gown to O'Connell, who certainly has tremendous power, *tollere seu ponere vult freta.* At present, however, he seems well disposed. He certainly is poor, and I am told that his family are very anxious that he should give up his trade of agitation and take to a more reputable line. It remains to see what his conduct will be in this interval and in the next session of Parliament. In the meantime we must not be idle in our reforms, and I think we have the materials ready for doing a good deal. I will send you the Grand Jury Bill as soon as it is printed. The Court of Exchequer, with its custodiams, writs, green-wax processes, and all the other vexatious abominations, must be looked to without loss of time. By the way, we have already hit a hard blow at the

green-wax processes in the clause of the Whiteboy Act Amendments Bill. I find, though O'Connell will not hear of terms, that the amendment of the Subletting Act, which passed the 'Lords,' is generally approved of by the Irish members. It will, therefore, not be difficult to pass it in the next session. I shall be disappointed if much good do not result from the Lord-Lieutenant-of-Counties Bill, both as regards the magistracy and the yeomanry. The question which most urgently presses at present, and which, if not attended to at once, may be too late, is that of tithes. I am clear that a complete alteration of this system is indispensable—that is, if we wish, as you and I do, to save the Established Church. I feel assured that it can only be done by a system of commutation for land, which I hope may be effected with the consent of the bishops. If they will not aid us, we cannot save them for many years. I think I shall be in Ireland about the 14th of next month for about a month . . . . I am anxious to get over, as there are many points which can hardly be settled except on the spot. Among others, I wish you would turn your views to this very question of tithe commutation; and if you have an opportunity of sounding the Protestants as to their views, I wish you would do so. I shall be in town for another fortnight if you

have anything to communicate; after that I take a week's holiday in Lancashire on my way to you.

"Ever, my dear Sir,

"Yours faithfully,

"E. G. STANLEY."

The foregoing letter is most important, as it gives the true reason for the elevation of O'Connell, and disposes of the misrepresentations which were current at the time: viz. that the Attorney-General was to be displaced, that O'Connell was to be appointed in his stead, and that the gift of a silk gown was merely a preliminary step to this end.

It is plain, from Mr. Stanley's letter, that the government never entertained the idea. Its members knew too well the value of the man to whom the administration of the law in Ireland had been confided; and the true reason why it was proposed to promote O'Connell was that of expediency. The government felt that his power in Ireland was enormous, and thought that, by conciliation, he might be gained over to the side of order.

Accordingly, we find that, although a silk gown was not given (it is possible that it may have been refused), a patent of precedence was granted, and

on the first day of the following November term he appeared in full bar costume with the patent of precedence in his hand, and was directed by the Lord Chancellor to take his place immediately after that of the Attorney and Solicitor-General. It was the price which the government paid for securing his adhesion, not to its side, but to that of peace; and as in most instances where principle is sacrificed to expediency, the government found that it had gained nothing, but had rather lost in reputation.

The tithe agitation became brisker, the feelings of the people more excited, and, as in the case of Newtown Barry, the successful assertion of the law in Limerick and in those counties where special commissions had been held, does not seem to have been of the slightest use in reducing to order the other parts of the country. At Carrickshock, in the county of Kilkenny, the outrage at Newtown Barry found a rival, which, although differing in many respects, had, however, the main feature of resemblance in being a deed of bloodshed, caused by resistance of the law.

The Attorney-General, in a report to the Lord-Lieutenant (after a number of abortive trials had taken place, and the crown had been obliged to

abandon the remaining prosecutions), has so fully stated the circumstances of the case, and the reasons which, in his opinion, led to the failure of justice, that we give it nearly *in extenso.* The English government, as the following letter shows, appears, however, to have entertained doubts as to the wisdom of abandoning the Kilkenny prosecutions:—

"*July* 17, 1832.

"MY DEAR ATTORNEY,—I am much obliged and gratified by your letter, which I have shown to Lord Grey and the Chancellor and our other friends. They are all highly pleased with the course and results of all your law proceedings. As to stopping the Kilkenny trials in the event of the failure of justice, they doubt, and so do I. It will be better, both with reference to the effect at present, and with a view to ulterior measures, to have it ascertained clearly whether the jurors and witnesses there will do their duty. I left with Mr. Stanley your letter and the papers as to Lurgan. We both agree that it is not a case for any proceeding against the magistrates. All our friends here are in good spirits, though we have still the tail of a troublesome session before us.

"I hope to see you soon. I am sure that I can be more usefully employed in Ireland than here.

"I am yours very faithfully,

"PLUNKET."

The following is the Attorney-General's report:—

"The trials at Kilkenny for the murders of E. Butler and Mr. Gibbons, the chief constable of police, appear to me to deserve the particular consideration of his Majesty's government. Your Excellency is aware that these, and the murders of several of the police, originated in a determination to prevent the service of *subpœnas*, issued from one of the superior courts, upon a bill filed for the recovery of tithes, by Mr. Hamilton, the incumbent of a parish in the county of Kilkenny. Butler, under the protection of the police, on the 12th and 13th days of December (notwithstanding violent threats and indications of resistance), had effected the service of several persons. On the 14th the population in the neighbourhood of a village called Hugginstown were rapidly collected by signals, to the number altogether of not less than 2,000. Their leaders, with great dexterity, contrived to get the police force into a position in which their arms and

discipline would avail them but little, and then, in a sudden attack, overwhelmed them, murdered Gibbons, Butler, and thirteen of the police. That the crime of all those engaged in this affair was murder, no doubt has or indeed could have been raised. Many of them were charged by the policemen who had escaped, and were soon after made amenable. The number of persons indicted has been twelve. Of these two have absconded, three have been acquitted, one was put twice on his trial, and the juries were discharged, without having agreed, and the remainder have been subsequently acquitted, as I desired that witnesses should not be called in support of the prosecutions. Since the Lent assizes, at which the bills were so found, six other persons have been charged, and were amenable at the last assizes; but I declined to indict them, and they have been discharged by proclamation. They may therefore be tried and indicted hereafter.

"Your Excellency will, I am sure, credit me, when I say that, in questioning the integrity of the juries empanelled to try these cases, I am performing a most painful task. Nothing short of a perfect persuasion that there are abundant grounds to do so, could induce me to charge with a breach of trust those to whom the law and constitution have

assigned so important a part in the administration of justice. The following summary will recall to your Excellency's recollection the proceedings to which this unfortunate affair gave rise.

"We find that in the counties of Kilkenny and Carlow systematic resistance to the payment of tithe was evinced at a much earlier period than in any other part of Ireland. I believe it is the fact that this has prevailed to such a degree that little or no tithe has been paid in those counties for the year 1831; and that, from the effect of intimidation, the persons who have paid have generally done so upon the condition of secresy. It is, I lament to say, among the effects of the same system, that it has led to the open palliation of the Carrickshock murders. I have myself read the report of the speech attributed to a Grand Juror, in which he states that the murders were not premeditated; and I have good reason to believe that they have been in general ascribed to meritorious and patriotic motives. This view of the subject is distinctly inculcated by a portion of the press. The operation of these and similar causes, and the fact that the population of Kilkenny is now divided into two classes—the actual combinators, and those whom they intimidate and govern—accounts, in my judg-

ment, for the dereliction of duty which I am compelled to impute." Referring to the reported evidence, he says, "in considering that evidence, it will be recollected that, though the credit of witnesses is to be decided on by jurors, they have no right to decide arbitrarily; and that, when they do reject it and decide against the positive swearing of disinterested persons, it is to be expected that the reason for their doing so will be obvious, and easily discoverable. Again, it may be remarked that from the unfortunate laxity of swearing and disregard for the obligation of oaths that prevail in Ireland, it scarcely ever happens that an *alibi* defence cannot be sustained by any number of witnesses that it may be deemed expedient to produce. The extreme jealousy and caution with which such testimony is to be credited are taught by the experience of any man who knows anything of our proceedings here; and the belief of an *alibi* defence, when the evidence for the prosecution is clear and unequivocal, will scarcely be referred to as a proof of the sound discrimination of a jury, though it may afford a pretext for an unconscientious verdict. The first of these trials was that of John Kennedy. It took place at the Spring assizes. He was fully identified by two witnesses. His defence was an *alibi*. He was ac-

quitted. Whoever reads the evidence will feel surprised at this result. I ascribed it to want of integrity and firmness. Under this impression, though not avowed by me, I applied to postpone the trials of the other persons indicted, on the grounds of the prevalence of the combination, which was the cause of the murders, the attempts to intimidate jurors, and the circulation of ballads calculated to produce intimidation and prejudice. The trials were postponed to the last assizes. Intervening events satisfied me that the causes of this postponement had undergone no abatement; but I resolved to bring forward a case in which their existence and extent should be put to an unerring test. The case was that of John Ryan. He was identified by four persons, was proved to have fled, and to have been arrested, concealed in the chimney of a house not his own. The jury could not agree, and were discharged. He was, three days after, put on his trial again. The jury, having disagreed again, were discharged. The next case was that of William Voss. He was proved to have been a leader of the mob, to have been present throughout all the proceedings, and to have taken an active part in them. He was identified by eight witnesses. The line of defence which his course

of cross-examination suggested, implied and admitted his presence at the transaction, and sought to attribute it to accident, or to the meritorious motive of preventing mischief. His presence, in point of law, was (and the jury were so charged) evidence of his participating in the illegal objects which led to the perpetration of the murder. To repel this, he was not able to prove that he uttered a word or did an act that could warrant the inference of his innocence; yet the jury, after being shut up nearly forty hours, acquitted him. Thus by these various acquittals all the witnesses for the crown were disparaged, and left me without a hope that in the other cases juries would have found verdicts on their evidence. In them therefore I declined to proceed. They are not, however, removed beyond the reach of future prosecution; for the indictments in which they are acquitted were for *two* of the murders, and they may be indicted hereafter for the others.

"If the perusal of the evidence fail to afford a justification of the decisions or doubts of the juries, there is no difficulty in discovering in extraneous circumstances the causes of such singular and unexampled proceedings. Subscriptions extensively collected for the defence of the prisoners, the opinion that their cause (though they were guilty of the

homicide) was one of general interest, the threats by which many of the jurors were assailed, the absence of a great number of persons of influence and property who were summoned to serve as jurors, the assemblage of a vast body of persons, almost on the spot where the murders were committed, the adoption by that body of resolutions breathing bitter hostility against the clergy of the Established Church, and agreeing to subscriptions, manifestly to support those engaged in opposition to tithe, afford a clue, which there can be no difficulty and no mistake in pursuing. Giving them their due weight, they leave us at no loss to conjecture why and how the course of justice has been impeded."

CHAPTER VII.

Continued disturbances in Ireland.—Extract from the charge of the Lord Chief Justice (Bushe) at Maryborough.—Existence of a clique to weaken the influence of the Attorney-General.—The "extra-official council" of Lord Cloncurry.—Correspondence of Lord Anglesey and the Solicitor-General with reference to a complaint made to Lord Holland.—Letters of Mr. Stanley during the interregnum of '32.—The Attorney-General's reply.—Continuation of the Government in power.—The anti-tithe agitation a source of disquietude.—Mr. Stanley's letters on the subject.—A short sketch of the tithe legislation.—Letter of Lord Melbourne on the proposed Jury Bill.

THE story of the Carrickshock murders was not forgotten, nor the failure of justice lost upon the people. Crime succeeded crime, and, in order to show the condition of things, we give an extract from the charge[1] delivered at Maryborough by the Lord Chief Justice (Bushe), a judge whose great name is of itself a guarantee that in the observations

[1] "A Report of the Trials at the Special Commission at Maryborough, 1832." By James Mongan, Esq., barrister-at-law. Milliken, Dublin.

which in the discharge of his duty he deemed it incumbent to make, he was not influenced by either prejudice or feeling.

After referring to the state of the country for the previous sixty years, and to the fact that in his long experience—"and," (he adds) "it perhaps is a formidable view of our situation"—he could not recollect a case "in which a man charged with an insurrectionary offence could plead poverty or want as an excuse," he proceeds as follows:—

"It is among the humbler classes, who either subsist by labour, or exclusively by farming, or partly by one and partly by the other, that the ostensible disturbers of the public peace are to be found. They seek to regulate property upon a new theory, and subject its acquisition, circulation, and enjoyment to their own dominion. They certainly encounter a principle which some persons think it would be difficult, if not impossible, to control. Whether that theory be right or wrong, whether the price of property and labour should be allowed to find its own level, or whether, on the other hand, it is not both safe and wise to deal with and modify that apparent tendency of human affairs, are topics not for this place, and upon which, in any place, I should be incapable of judging; but

it does belong to this place, and to you, and to me, to lament that those delicate questions which the wisest statesman would approach with fear, and touch with a trembling hand, should be subject to the rude decision of a misguided and infuriated peasantry. . . . Crime and misery—those inevitable consequences of popular licentiousness—both abound amongst you, and are traced, as you will see, through all the means which have been always adopted by the insurgents for accomplishing their objects.

"Illegal oaths are administered by them (often by compulsion) to unhappy wretches who attribute to them an obligation which they deny to more legitimate engagements. Vengeance is declared against all who refuse to join their associations, resist their mandates, or give information of their crimes. By those means they become numerous, and the incessant and indefatigable plunder of arms from all descriptions of loyal and peaceable subjects renders them formidable. Then destruction of property follows: houses, barns, and granaries are levelled, crops are laid waste, pasture lands are ploughed, plantations are torn up, meadows are thrown open to cattle; cattle are maimed, tortured, killed; those persons who incur their displeasure are visited by parties of banditti who inflict cruel torture upon their persons, mutilate

their limbs, or beat them almost to death; men are deliberately assassinated in the open day, who have in any way become obnoxious to the insurgents, or opposed their system, or refused to participate in their outrages; and sometimes the unoffending members of a family are indiscriminately murdered by burning the habitation of one devoted victim. Entire classes are proscribed by them, especially those who in any way, from the highest to the lowest department, contribute to the administration of justice." Having then made some further observations, he draws the conclusion that "it is quite plain that ordinary laws calculated for civilised communities are not applicable to a country so circumstanced."

It was with this state of things that the Irish government had to grapple. "The conflict," to use the Chief Justice's expression, was "one of law against outrage," and on the firm administration of the former everything depended. Had the government shown any signs of weakness or of vacillation, the consequences would have been most serious. The Attorney-General was, however, not merely as a lawyer, but as a statesman, equal to the emergency, and he continued to pursue the same undeviating course which he had taken from the outset.

It could hardly be expected that the energetic measures of Blackburne would prove palatable to the Roman Catholic party. He was looked upon with suspicion and dislike from the first; and his victory over O'Connell was neither forgotten nor forgiven. The champion of Catholic Emancipation had received a severe wound, and besides, Blackburne had been taken from the ranks of the opposite party, and placed in the highest position at the bar.

He has stated that, from the commencement of his career as Attorney-General until his resignation of the office, there never ceased to exist in active operation (so far as it could exhibit itself) a clique directly in the interest of O'Connell, having for its main object the subversion of the power and influence of the Attorney-General, by exposing him to the suspicions of the government, and thus eventually driving him from office.

The following may perhaps throw some light upon the question, "Of whom did the clique consist?" Lord Cloncurry, having made the acquaintance of Lord Anglesey when Lord-Lieutenant in 1828, on his second viceroyalty became on terms of great intimacy with, and appears to have acquired considerable influence over, him. In his "Recollections," the work to which reference has been already made,

he writes[1]: "I was so far honoured by his (Lord Anglesey's) confidence as to be permitted to form a sort of private cabinet, to which he frequently referred for counsel and assistance. In this extra-official council, of which, I confess, I was not at first a very willing member, were included Mr. George Villiers (now Lord Clarendon), the late Right Honourable Anthony Richard Blake, and Mr. William Henry Curran (now a judge of the Insolvent Debtors' Court). We met very frequently at dinner, as well as at other periods when matters occurred respecting which Lord Anglesey wished for information and advice. And so often, and at such uncertain times, was this assistance called for, that it was my habit to have post-horses constantly ready at Lyons in order to enable me to obey his Excellency's summons."

It is unnecessary to do more than to direct the reader's attention to the names of the persons who formed it, in order to see the character of this extraordinary private junta or conclave. Lord Cloncurry was, according to his own showing, a friend of O'Connell. Mr. Villiers had been resident in Dublin as Commissioner of Excise from the year 1829, and was a Whig in politics. Mr.

[1] "Personal Recollections of Valentine Lord Cloncurry," p. 332.

Anthony Blake was a Roman Catholic, who, although perhaps dissenting from O'Connell in the course which he had taken in attempting to resist the law, could not but be in all other respects a warm sympathiser with him; while Mr. Curran (son of the late Master of the Rolls) was a gentleman who unquestionably held very advanced political opinions. We are of course unable to say whether this was the clique to which Blackburne refers, but we think it is evident that from its constitution this "council" could not have been friendly to his interests.

The following was written in consequence of a complaint made to Lord Holland that in the appointments connected with the crown prosecutions, the Attorney-General had studiously passed by the friends and supporters of the government:—

"BLACK ROCK, *September* 3, 1831.

"MY DEAR ATTORNEY-GENERAL,—I rejoice that you fully understand my motive for speaking to Greene about you as I did last night. I am so anxious that you should be really known on the other side that I must beg of you to authorise Crampton to show your letter to him to Lord Holland. It is curious that whilst you were

occupied in explaining all the appointments that were cavilled at, I was writing to Holland to assure him of my belief that the insinuations he in so friendly a manner apprized me of were fully without foundation. I hope you will forgive me for forwarding also to him Mr. Bennett's letter and statement. Really our friends on the other side are shamefully misled. We are maligned by both parties. The lie of the day has its effect, and, before there is time to refute it, another is propagated.

"Believe me, very sincerely yours,

"ANGLESEY."

A few days afterwards the Solicitor-General writes:—

"*Private.*

"*September* 7, 1831.

"MY DEAR BLACKBURNE,—This morning I waited upon Lord Holland, and had a long and satisfactory conversation with him about you and about Ireland. I read to him your letter, and I can say that his lordship is perfectly satisfied that there is no truth whatever in the charge 'that you had in any of your appointments been influenced by party or by political motives.' Lord H. does full justice to your political

conduct and character, and attributes (as all who know you do) the imputations cast upon both to that virulence of party spirit which is the great calamity of Ireland. It was at Lord Anglesey's desire I went to Holland House. He has written of *you* in such terms as would call blushes of pride and gratitude into your cheeks had you read his letter.

"Adieu, dear Attorney.

"Yours faithfully,

"P. C. CRAMPTON."

The following is from Lord Anglesey on the same subject:—

"BLACK ROCK, *September* 15, 1831.

"MY DEAR ATTORNEY-GENERAL,—I rejoice in what I hear respecting you from England. Read the inclosed. . . . . It is quite possible I may slip across for a few days, but you will be here at all events before I could start, so I need not enter upon any matter by letter.

"Very truly yours,

"ANGLESEY."

The attacks failed in their object and Blackburne continued, as Attorney-General, to administer the

affairs of Ireland with the confidence, not only of the government, but of the orderly and well-disposed classes of the community. The former consulted him, as the accompanying letter shows, not merely on all matters relating to the administration of the law, but also with respect to the appointments connected with it:—

"*Confidential.*

"WHITEHALL, *April* 14, 1832.

"MY DEAR SIR,—I have had some conversation with Lord Anglesey upon the subject of the vacant assistant-barristership of the county Cavan. I am quite satisfied of the necessity of filling up these situations with reference to personal qualifications for the office. At the same time, looking to the current in which government patronage has run for so many years, and the numerous complaints that are made against us, it is essential that we should give the preference to those whose political opinions accord with those of the government, and who perhaps on that ground have been hitherto kept in the background. We owe also something to our supporters in Parliament; but I am sure you will give me credit for sincerity when I say that no parliamentary considera-

tion should induce me to nominate a man whom I thought unfit for the office. I have, therefore, in conjunction with Lord Anglesey, agreed to submit to you, in *confidence*, three names for your opinion of their legal merits; and while I do so, I will add also that, if you think they are any or all of them incompetent, you will at once say so, and suggest any others whom you may think to have superior claims. .... Let me have an immediate answer on this subject, as the early settlement of it will prevent a multitude of applications which are continually pouring in.

"Believe me, my dear Sir,

"Yours sincerely,

"E. G. STANLEY."

The following correspondence between Mr. Stanley and Blackburne took place during the interregnum in 1832, at a time when it was by no means certain that the Grey administration would continue in power.

We must, however, in the first instance make a short digression, and briefly refer to the political events of that period. In September 1831 the new Reform Bill had passed the Commons by a majority

of 109, and the question then arose, "What will the Peers do? will the House of Lords still persist in opposing Reform, and assert its power and independence by rejecting the measure, or will it yield to the popular cry, and pass the bill?" After a five nights' debate it chose the former alternative, and rejected the bill by a majority of 41, and the government was saved from resignation by a vote of confidence having been passed in the Commons.

Parliament was prorogued on the 31st of October, and on the 12th of December, the Reform Bill was again introduced to the Commons, where the second reading was carried by a majority of 136.

Matters now became serious. The King had declared that he would not dissolve the House of Commons should it reject the bill, nor create peers if the Upper House did the same; and the government, having anxiously deliberated as to the course which it should take, after great doubts and hesitation decided on presenting the creation of peers as a cabinet measure. It was, however, spared the necessity of pressing this alternative upon the king, as the second reading of the bill was carried in the Lords on the 7th of May by a majority of 9. In committee, however, an amendment of Lord Lyndhurst's was carried soon after, and the government at

once tendered their resignation, which was accepted. The Duke of Wellington was sent for, but was unable to form an administration, and it was announced on the 17th that his commission to do so had failed, and Lord Grey and his cabinet were reinstated in office.

Mr. Stanley's letter is as follows:—

"*Private.*

"WHITEHALL, *May* 10, 1832.

"MY DEAR SIR,—We are all on this side of the water in a state of complete uncertainty as to the formation of a government—how it is to be done is to me at this moment inconceivable: but the object of my writing to you is to beg that, in the general break-up which must ensue, you will not think it necessary to tender the resignation of your office. Whatever the arrangements may be, the probable difference between the policy of the present government (or rather the late) and its successor will not be such as in any degree to call for such a step. On the subject of Reform, which is the main point, the next administration will probably have opinions more in consonance with your own; and with regard to the management of Ireland (the only point in which you are *politically*

concerned) I cannot anticipate that there will be much change of system, if any. I cannot but think therefore that, under any circumstances, you may retain office with the most perfect honour, and I am not flattering when I say that I should consider it a serious loss, if Ireland were at this moment to be deprived of your official services. For myself personally I rejoice most unfeignedly at my liberation, and my only regret is, breaking up my official connections with many with whom I have acted cordially and satisfactorily in the public service. Among them be assured I reckon yourself, and that I shall not feel any diminution of the regard with which

"I am, dear Sir,

"Yours very sincerely,

"E. G. STANLEY."

To this the Attorney-General replied:—

"MY DEAR SIR,—I feel deeply sensible of the kindness which has induced you to write the letter I have just received. The very unexpected dissolution of the ministry placed me in a position in which I could scarcely have ventured to judge for myself, and it was my determination to act according to the advice of the Lord-Lieutenant, the Lord Chancellor,

and yourself. The early intimation of your opinion communicated to me by my friend C., enabled me yesterday to ascertain that you all concurred. For the present, therefore, I shall not tender the resignation of my office. That any system of government in Ireland can differ from the last, I agree with you in thinking highly improbable; but unquestionably I can never act under one that allies itself with the extremes of either of our conflicting parties. I have an habitual aversion to both, and believe that the country never can prosper if its government be in the hands of the one or the other. I should do great injustice to my own feelings, if I did not express to you with what gratification and pride I have read the part of your letter which refers to my official services. Believe me, that there is no man living whose favourable testimony and opinion I value more highly than yours. Let me add that the assistance and support of such a colleague has often sustained, and been necessary to sustain me in my exertions; and whether my official life is now to close or to be continued, I shall never think of the cares and labours of the last eighteen months without remembering the proofs which they produced of the friendship and confidence of Lord Anglesey and yourself."

The government having remained in power, the

same confidential relations continued to subsist between Mr. Stanley and the Attorney-General. The tithe agitation was still the great source of disquietude; and a heavy responsibility was thrown on the Chief Secretary and officers of the crown, not merely of repressing the crime and disorder which it had produced, but of devising a plan by which the unfortunate clergy would be saved not only from persecution, but from actual starvation.

Accordingly Mr. Stanley writes:

"THE OAKS, *January* 3, 1832.

"MY DEAR SIR,—The continued opposition to the payment of tithes, augmented as for the time it necessarily must be by any proceedings being founded upon it in Parliament, renders it necessary that we should take such precautions as we can for the support of the Church, until the question shall be finally decided in Parliament. It has been under consideration whether it might not be desirable to make an offer to the respective clergymen, to take upon ourselves the collection of the composition rent, making a deduction of 20 per cent. from the gross amount. It is believed that this might be effected as a temporary arrangement through the instrumentality of 'The Woods and Forests,' and the amount

collected at the same time and in the same manner with the Irish rent, and that out of the 20 per cent. deduction we should be able to make some indulgence to the tenants, and amply to reimburse the officers employed in the collection. The present expense to the clergyman in many instances amounts to 12 per cent., not to mention risks. But what we are particularly anxious about is to know whether the government has the power of taking this step upon their own mere motion, with the consent of course of the incumbent, or whether it would require an Act of Parliament to enable them to do it. On this subject, I should be glad of your and Crampton's opinion, as soon as possible. I hope no act may be necessary, but if it should, it ought to be one of the first subjects for the consideration and *recommendation* of the committee. The act should be to empower the Lord-Lieutenant and Privy Council, if they should think fit, to call upon the collectors of the Irish rents to take a lease of the tithe composition of the parish of —— at 20 per cent. below the amount fixed by the composition, and to transfer to them the powers possessed by the clergy for recovering the amount. Of course these leases should be for a short period, and not binding upon the successor of the individual incumbent. The objection

raised to this plan (and it is of some weight were it proposed to make it permanent) is that it throws the odium of collection on the government, and may lead to resistance of taxes and rent: but I confess this argument does not weigh very heavily on my mind, for it is clear to me that an *acquiescence* in the non-payment of a legal demand must infallibly lead to the same result; that the government would have the power on the one hand of arranging matters more favourably to the payer, and on the other of enforcing the demand more successfully than individuals; and that it is of vital importance that the earliest opportunity should be seized for removing the erroneous impression that it is the intention of the government to abolish a payment for the clergy derived from the land. Let me therefore (as soon as you can) have the benefit of your opinion whether any bill be necessary or not, and if it be, I should like a draft sent up which may be submitted to the committee. I would suggest that it would be as well for Crampton to come up armed with a bill for amending and rendering *compulsory* and *perpetual* the Tithe Composition Bill. The criterion of the seven years from 1814 to 1821 should be altered to the seven or fourteen years next preceding the composition; the amount left to be varied every

twenty-one years, according to the price of corn (unless previously commuted), and the clergyman given a remedy at law against the landlord directly, instead of leaving it to the tenant to deduct. The evasions of the law and the difficulties to all parties render this essential. These two bills (if the first be required) should be prepared *immediately:* a third will be required subsequently to commute for land, and give the landlord the power of redemption. The details of this bill will require much consideration. . . .

"Ever, my dear Sir,

"Yours most sincerely,

"E. G. STANLEY."

The plan of having the collection of tithe composition made "through the instrumentality of the Woods and Forests," was not carried out. A statute was passed instead (as a temporary expedient), styled the "Million Act," which was chiefly for the purpose of advancing money for the relief of the clergy, and to which, therefore, we need not further allude. In order, however, to understand that part of Mr. Stanley's letter in which he speaks of a bill for making tithe composition "perpetual and compulsory," it becomes

necessary to state very briefly the various methods adopted by successive governments, to get rid of the difficulty in which they were placed, by the enforcement of tithes in a country in which the great proportion of the people were of a different religion from that of the persons entitled to demand them.

The first step was to do away with the payment of tithes in kind. This was effectuated by "Plunket's" Act,[1] which empowered ecclesiastical persons by lease, binding on their successors, to demise tithes to the possessors of the land out of which they issued, reserving a fixed rent; and the preamble, which is in words nearly the same as that of the statute to which we shall next refer, gives the following as the object: "Whereas it is desirable to render the incomes of ecclesiastical persons in Ireland more certain and more easy of collection, and to avoid controversies."

This statute was followed by "Goulbourn's Act,"[2] which provided for the creation of a composition in lieu of tithe for a limited period. It was in turn followed by "Stanley's Act,"[3] which made the composition perpetual, general, and compulsory, and also provided that tenants from year to

[1] 3rd Geo. IV. cap. 125. [2] 4th Geo. IV. cap. 99.
[3] 2nd and 3rd Will. IV. cap. 119.

year, or at will, should be for the future exempted from the payment of compositions, and for which the person having the next greater estate was made liable, the liability devolving on the expiration of such greater estate upon the next, and so on to the fee. The act also provided that, in all future leases, the lessee should be free from tithes, and that all contracts or agreements to the contrary should be null and void.

The enactments prior to "Stanley's Act" can hardly be said to have been more than palliatives. No doubt they grappled with the obnoxious "tithes in kind," but still left the payment of the substituted "rent" or "composition" upon the occupiers. "Stanley's Act" made a material step in advance, by the two provisions which we have just stated; but the "grievance," as it was styled, still remained, and the legislature, by the statute to which we shall now refer,[1] removed for the future all ground of complaint by abolishing composition for tithes, and substituting, in lieu thereof, rent charges, which were made payable by persons having the first estate of inheritance.

We do not propose to enter into a discussion of the various questions which arose on the construction

[1] 1st and 2nd Vict., cap. 109.

of this statute shortly after its passing, and which grew out of the bearings of the previous legislation upon it. These questions have been long since set at rest, and at the time when the Irish Church Abolition Act was passed, the burden of the payment of tithe rent-charge had entirely shifted from the occupier to the owner.

The following was written on the eve of the prosecution for the Carrickshock murders, to which (as we have already done so) it is unnecessary to allude further :—

"IRISH OFFICE, *February* 27, 1832.

"MY DEAR ATTORNEY,—I ought long ago to have acknowledged your two last letters, but you will not expect any apology, but will make it for me yourself. You are on the eve of a most critical period, and one to which I look forward with the most intense anxiety, as decisive of the state and prospects of the country. If the law should again prove triumphant, and juries do their duty in Kilkenny as they did in Clare and Galway, I shall yet hope for the best; but if the gentry hang back and the law be defeated, I see no alternative but the introduction at once of martial law into that and the neighbouring counties. It will be a matter for

your discretion (which I am sure you will exercise soundly) how far you will proceed with the crown cases. Should the latter spirit unfortunately manifest itself, I am clear you will do well, if you have any fair, ostensible ground, not to press the tithe case, which you mention as having stood over from a former assizes. When we get our bill passed for the recovery of last year's arrears, the great object attained by advancing a portion of the clergyman's income, and leaving the conduct of the cases in the discretion of the government, will be to enable us to bear lightly on the lower and poorer classes, and to visit with all the power of the law such men as Mr. ——, Mr. ——, &c., &c. Dr. Doyle has been two days under examination, and has given a very bold evidence, declaring that no power on earth shall ever again compel him to pay tithe. I fear we have little chance of doing any good with him by fair means, any more than with O'Connell. The latter goes over on Wednesday, and means to have a splash to-morrow before he goes. . . . . I shall wait with anxiety your reports from Kilkenny, and am very glad you are going there in person.

"Ever, my dear Sir,

"Yours faithfully,

"E. G. STANLEY."

The attention of the government was directed, in the year 1832, to the reconstruction of the jury laws. Lord Melbourne, at the time Home Secretary, thus writes:—

"*Secret and Confidential.*

"HOME OFFICE, *May* 31, 1832.

"MY DEAR SIR,—I have sent you a copy of the Jury Bill which is now pending in the House of Lords. Great objection is taken to it there, principally upon the ground of the lowness of the qualification, and the necessity imposed by the act of placing every person so qualified upon the juror's book, which, it is said, will bring upon juries persons of a description totally unfitted to discharge the duty. . . . . If you are of opinion that it is safe, and that any bad consequences are sufficiently guarded against in it, I would be obliged to you if you would give me your opinion in writing to that effect, and the reasons for it. I have written to the Lord Chancellor and to the Chief-Justice upon the subject, with whom perhaps you will consult.

"Believe me yours faithfully,

"MELBOURNE."

"P.S.—A copy of the bill will be sent to-morrow."

A note of the Attorney-General's reply is not (we regret to say) forthcoming, for, at the present juncture, it would be a valuable state paper. The safety and well-being of Ireland have recently been seriously imperilled, and protection to life and property in a great measure withdrawn, by the operation of a statute which altered the existing law with respect to the qualification of jurors. It will be seen from the letter of Lord Melbourne, that "the lowness of the qualification" in the bill was that to which exception was taken, and that it was upon the question of its being "safe" that the Attorney-General was asked to give his opinion.

The Lord Chancellor and the Lord Chief-Justice having been also consulted on the subject, we think that it may fairly be assumed that the measure, in the shape in which it subsequently passed the legislature, had not merely the approval of Blackburne, but also that of the eminent judges referred to, and therefore that any alteration in the existing law, the provisions of which had been so well considered, should have been the result of patient and calm deliberation, and not of hasty and crude legislation.

We are unable to state to what the following

letter of Lord Anglesey alludes. Attacks had evidently been made upon the action of the government with respect to the administration of the law, and Lord Melbourne had been in communication on the subject with Lord Anglesey. The letter is one written in evident disappointment and regret:—

"MARETIMO, *June* 15, 1832.

"MY DEAR ATTORNEY-GENERAL,—I send in confidence letters which you should read. You, like myself, are above minding hard words, which are said or written from false impressions; and when put forth by honest, well-meaning, and intelligent men, they are also worth attending to. In Melbourne's, you will see in what way my letter can give him the best help. Assuredly we may assert, that we have never failed to give protection to life and property; and as assuredly I may well say, that I have not received that cordial co-operation from magistrates and influential gentlemen which would have been most beneficial; but I think this should be said in tones rather of deep regret at the necessary consequence of prejudice against the government, than of reproach. I almost think

that I shall go into the Queen's County, although I confess I have no fancy for it; but when there is even a chance of doing good, I am ready to make any sacrifice.

"Most truly yours,

"ANGLESEY."

CHAPTER VIII.

Continued resistance to the payment of tithes.—Prosecution of the ringleaders.—Passing of the "Coercion" Act.—Resignation of Mr. Stanley as Chief-Secretary, and of Lord Anglesey as Lord-Lieutenant.—Appointment of Sir John Cam Hobhouse and Mr. Littleton successively to the former, and of the Marquis Wellesley to the latter post.—Friendly letters from Lord Anglesey after his retirement.—Report of the Attorney-General to the Lord-Lieutenant on the subject of the Orange processions.—Impatience of O'Connell and his followers at Blackburne's continuance in office.—Serjeant Perrin's attack on the latter in the House of Commons.—Correspondence between the Chief-Secretary and the Attorney-General.—O'Connell's letter to Lord Duncannon.—Circumstances which led to it.

THE various measures taken by the government to repress the tithe agitation do not appear to have been successful: anti-tithe meetings were held throughout the country, and the flame of resistance to the payment of tithe carefully and sedulously kept alive. The crown therefore determined to try the powers of the law against the ringleaders: many were apprehended, and before the end of the year brought to

trial. The majority, after a few convictions, by the advice of O'Connell, pleaded guilty, and a check was given to the agitation.

Although the government were so far successful in repressing the anti-tithe meetings, the condition of the country was daily becoming more alarming. Lord Grey therefore, at the commencement of the following session, applied for "further powers," which he said,[1] "were called for in order to repress a system of association, which proceeded openly under an organization, and was avowedly directed to the accomplishment of objects that destroyed the peace of the country, and threatened the unity and integrity of the empire—to put down combination formed in defiance of the law—to defeat armed bodies that violated the rights of property, inflicted death for purposes of terror and vengeance, and rendered the law nugatory by deterring prosecutors and witnesses and intimidating jurors," and accordingly a statute of a temporary character was passed conferring on the government additional powers.

Mr. Stanley shortly after the passing of the "Coercion Act," resigned the place of Chief Secretary for Ireland, and took instead that for the colonies. Sir John Cam Hobhouse succeeded him, but after a

[1] "Annual Register," 1833, p. 38.

short interval his post was filled by Mr. Littleton, afterwards Lord Hatherton. In September 1833, Lord Anglesey, from ill health, was compelled to resign the Lord-Lieutenancy of Ireland, and was succeeded in it by Lord Wellesley.

The following close the correspondence between the former and the Attorney-General. Some few letters passed between them many years afterwards. They were, however, on matters of a private character, and merely the result of their former intimacy :—

"UXBRIDGE HOUSE, *October* 3, 1833.

"MY DEAR ATTORNEY-GENERAL,—Although I am suffering dreadfully, yet I cannot allow even a post to go without thanking you sincerely for your affectionate letter. You owe nothing to me—you owe everything to your own sterling merit and ability, and you may be assured that in me you have a warm admirer and a sincere friend.

"Ever truly yours,

"ANGLESEY."

"ROME, *February* 18, 1834.

"MY DEAR ATTORNEY-GENERAL,—I received your kind and acceptable letter of the 26th of January,

two days ago; and to prove to you how I prize it, I acknowledge its receipt by return of post. I subscribe to all you say—I see things as you represent them; but although I certainly held a situation which was irksome and unthankful, yet I never cease to regret that the state of my sufferings obliged me to abandon the helm at a time when the vessel seemed to be righting (as we sailors say), and when I had a fair prospect of being enabled to bring her into port to repair her, and to start her upon a promising voyage. I had the fullest confidence in those with whom I had to act; and in no public man with whom I ever did act had I more implicit confidence than in you. But you know it, and I need not have repeated it. Fate, however, decided against me; but as I have great confidence in the statesmanlike views and clear head of your present governor, I sincerely hope that the change may be beneficial, not prejudicial, to your unfortunate country. Yet, knowing O'Connell as thoroughly well as I believe I do, I really think that I should have managed him better than almost anyone. If there is the least weakness evinced, any coquetting or attempt to derive any benefit for the country through an understanding with him, which must inevitably be hollow, disgrace will attend the step. You alarm

me by the hint that there is even the most distant idea of *promoting* you to make room for another. I would not for the world that this took place. If anything were to remove you from your situation it is *not* that person I would wish to see in it. If I had the power, you should remain Attorney until you could have the seals. . . . .

"Your letter has brought me back to politics: here we have nothing of them. What a change for me! and how much more suited to my taste to lead this tranquil life, than to sail in the troubled seas which you and I navigated together, and not unsuccessfully, I think.

"We have the most beautiful weather imaginable, and I am constantly on horseback, and the rides are the most charming that can be imagined. You, and Mrs. B., and your *ten* have, I conceive, little prospect of enjoying these scenes; your services are too valuable to be parted with: they cannot do without you. But if it be reserved for you to visit this classical country, you, with all your classical recollections (which fail me), will be enchanted, and will never stir a step without wonder at the gigantic achievements of ancient Rome. Every work appears to have been destined for eternity, and one is in perpetual astonishment, and lost in attempting to discover the

means by which they could accomplish such prodigious undertakings. They would have made you a ship canal from Galway to your bay in a month. How a Roman emperor would have smiled at the difficulty of forming one from Kingstown to Dublin. To me the aqueducts are the most surprising monuments of enterprise and art. The riches of modern Rome in her churches surpass imagination. Their exterior architecture is detestable. It is ecclesiastical wealth that will destroy church establishments, and at no distant period. So look to it. I have nothing interesting to entertain you with, nor should I be justified in taking up more of your valuable time. Remember me to my good friends. Be assured that I wish you well, and that I shall ever remain

"Sincerely yours,

"ANGLESEY."

The north of Ireland had also become a source of difficulty to the government. Hence we find that an act of a temporary character was passed in the year 1832, "to restrain for five years in certain cases party processions in Ireland." Lord Wellesley requested the Attorney-General to make a report to him on the working and effect of the act, and we here give that valuable and interesting document :—

"In compliance with your Excellency's desire that I should avail myself of such opportunities as my recent visits to the north-western parts of Ireland might afford me, for the purpose of ascertaining whether it was probable that the exertions of the government for enforcing obedience to the act to restrain party processions in Ireland would be successful, I have now the honour to inform you, that I have used my best endeavours to comply with your Excellency's desire. The result of all that I have seen and heard, and of my own deliberate reflection, is, that I entertain a most confident expectation that by persevering in those exertions we shall soon witness a total cessation of those processions.

"My reasons for this conclusion, even at the risk of being tedious, I shall place before your Excellency very fully; and the weight of many of them can only be estimated by a retrospect of the state of things which preceded the enactment of the statute to which I have referred. That statute received the royal assent, I believe, on the last day of the session of 1832. Previous to its enactment many attempts had been made to fix on these processions the character of unlawful assemblies. These attempts, however, proved fruitless; for however plain the principle of the common law—that the

assembly of unusual numbers of persons displaying arms or offensive weapons, and thereby by their acts or declarations exciting terror or alarm, amount to a misdemeanour—it was impossible to induce juries to convict in cases where there was a mere parade or procession not attended by any act of violence, or any aggression upon person or property; in other words, they could not, or would not, infer in such cases the existence of terror or alarm. That these processions had been attended for many years with injurious effects; that they had been countenanced, or at least not discountenanced, by former governments; that their injurious effects were solely attributable to the Roman Catholics, who without reason had made them a cause or pretext for offence; that it was unjust to make the acts of others a test of the legality of these processions, and to punish for an act, not because it was itself criminal, but for the consequences which were not its natural result, and to which it had not, until very recently, given rise—were amongst others the arguments or pretexts by which all the attempts of my predecessors and myself, to fix these processions with the character of unlawful assemblies, were rendered abortive.

"That a great evil existed, and that the existing law could not cope with or suppress it, were

propositions of the truth of which no man could doubt, and the act was therefore passed which prohibited and punished the procession, making the act criminal, whether it was calculated to produce terror or not. The enforcement of obedience to it was encountered by all the reasoning which had effectually obstructed the application of the rule of common law to party processions. The law itself was criticised as a violation of justice, in making acts lawful *per se* penal; and notions continued to prevail, that peaceable processions, not attended or followed by acts of violence, were exempt from its operation. Add to this, that the law was directed against a habit to which there was a long and deep-rooted attachment, and it may be safely asserted that immediate and unqualified obedience was scarcely to be expected.

"It is only by a fair estimate of the difficulties to be surmounted that we can justly appreciate the extent of our progress; and on that, again, is mainly to be rested our assurance of ultimate success. It may now, from all my observation, and from all my means of information, be safely affirmed, that the number of processions was less in the year 1833 than in the preceding year, and in the present year considerably less than in 1833. In one county

(Fermanagh), perhaps the most untractable, the judicious and praiseworthy exertions of its Lieutenant (Lord Enniskillen) has caused the total discontinuance of processions. In places where processions have continued, their numbers have diminished, and amongst them are no longer to be seen gentlemen or persons of character or property.

"Of those who have thus continued to violate the law, the most active have been identified and brought to trial; and if I am to state the particular matter on which my expectations are founded, it is that though they have violated, they do not brave the law, nor speculate on the prejudices, corruption, or intimidation of juries for acquittal. Their submission is not only creditable to them, it is also creditable to the tribunals to which they are amenable, and assures us that this law will be executed, and cannot continue to be violated with impunity. Its steady and consistent assertion, and the judicious extension of lenity to cases in which ignorance and unintentional violation of the law are pleaded in mitigation, has had a salutary impression upon the minds of all persons who had heretofore supported those exhibitions of party spirit.

"If I wanted evidence to warrant the assurance that it must be so, I would refer to that to which for almost the first time in my life I can appeal—my own

personal observation as to the general subordination and submission to the law which the north of Ireland presents, contrasted with the other parts of Ireland with which I have long been familiar. But whoever passes through that district of it from which I have just returned, will recognize in its orderly and moral habits, in its industry, in the multiplied and multiplying evidence of its improvement, and in its high degree of civilization, abundant ground for believing that such a people, with such habits, are not likely to persist in a wilful and reckless violation of any law.

"I will add to this letter, already too long, but one suggestion. I regret to say that though persons do not take an active or open part in these processions, they do not use their influence to prevent them, and I believe that this observation may be justly extended to many magistrates who by their absence appear to countenance processions, and most certainly very culpably forbear to perform their incumbent duty. A charge of a wilful dereliction of their duty would warrant, if substantiated, an extreme measure of punishment; but it is a charge difficult to prove, and only to be preferred on plain and satisfactory grounds. But there is more than enough known to warrant a call on the Lieutenants who I am persuaded could, in their respective counties, by judicious and timely remon-

strance and advice, accomplish more there than it is possible for the government to effect, by the publication of circular letters, or by any threat of punishment, for the violation or neglect of public duty."

The impatience (to which we might apply a stronger term) with which O'Connell and his followers viewed first the appointment of Blackburne to office, and afterwards his continuance in it, could no longer be curbed. We have already seen that at the time of the O'Connell prosecutions Lord Cloncurry had attempted to interfere with the Attorney-General, and also that efforts were afterwards made to undermine his just influence; but after the resignation of Lord Grey in 1834 it was thought that the time had arrived for more open and determined warfare, and accordingly Mr. Serjeant Perrin made in the House of Commons a charge of unfairness in the conduct of the crown prosecutions on the part of the Attorney-General, which led to the following correspondence. A copy of the letter of the Attorney-General is not forthcoming, but Mr. Littleton's subsequent letter and the Attorney-General's reply are as follows:—

"IRISH OFFICE, *August 6th*, 1834.

"MY DEAR ATTORNEY-GENERAL,—I heard Perrin's speech on the clause of the Coercion Bill, which I

suppose is the speech you refer to, but I do not remember that he made any charge against you individually: if he did, it escaped me. If you had had a House of Commons education, you would care as little for abuse as I do. Thus much you may always bear in mind—that the House, from the multiplicity of business passing through it, and the abusive habits of the Irish members, forgets all imputations the moment it has heard them, and the government know really nothing of them: gross cases and novelties alone attract attention.

"With respect to the system of ordering jurors to stand aside you know my opinion, which was confirmed by a careful perusal of the paper you wrote on the subject, and which I have no doubt was as perfect a defence of the system as could be composed. The system you are aware is never practised in ordinary cases in England, if in any, and I cannot persuade myself that much good would not speedily result in Ireland from a steadfast perseverance in the abandonment of it. The sense of the House of Commons is entirely against the system. Few people in this country are aware of the fact that crown solicitors exercise a privilege of this description. I would not advise you to have anything said on the case in question, which everyone has forgotten, and

which probably not five people listened to at the time; but nevertheless, if you desire it, I will make any explanation you please.

"I remain, my dear Attorney-General,

"Faithfully yours,

"E. T. LITTLETON."

The following is the Attorney-General's reply:—

"It is always with reluctance that I trouble you with a matter that seems to concern myself personally. I know it is the duty of public men to bear, and you will judge whether, in the present instance, I have been sensitive to a degree that anyone can fairly censure. Had Serjeant Perrin's speech (as reported) been in substance what you state, it would not have called for any observation; but I can truly assure you, that the speech published in all the papers, was in effect this: that no confidence was placed in us in Ireland, that it was an imposition on the people of England to say so, and that the conduct of the crown prosecutions was a matter that excited general discontent and dissatisfaction. As a proof of the justness of this charge, it was alleged that at the last assizes of Kildare and Carlow, any Roman Catholic, and even any man connected by consanguinity with

Roman Catholics, was set aside. So far as this consisted in general assertion, I should not have noticed it. I believe and am confident that no such discontent or dissatisfaction exists: on the contrary, I do believe that the government, and those who conduct crown prosecutions, have full credit for the most anxious desire and unceasing exertions to have justice impartially administered.

"As I have said, an assertion to the contrary I should neither have regarded nor complained of; but when specific instances of the abuse of the crown's power are pointed out (and they were introduced as a proof that distrust in me was well warranted), and when this was done in Parliament by a law-officer of the crown, I felt, I confess, that an injustice was done to me, and that it was incumbent on me to ascertain whether the powers of the crown had been abused, and whether any authority for that abuse was pretended by the crown solicitor. Mr. Geale has been desired to report all that relates to the specific charges. You probably will receive his report as soon as this reaches you.

"As to explanation in Parliament, it now appears that what was said in the House neither requires explanation nor contradiction. As to the misreport

of the speech, I do not feel that I am the person likely to be injured by it.

"I am very sorry that you do not take the same view of the necessity of continuing the power of the crown that I do, but you are under a mistake in thinking that it is often exercised. My belief is that it is so used, but seldom, and never but with reluctance. Theory, however, may be in favour of its abolition, and so should I, if *experience* did not prove that in Ireland at least there are occasions when the want of honesty, firmness, and impartiality, may endanger the purity of verdicts. If the experiment is tried, I shall lament to find my apprehensions realized."

The attack made by Perrin was merely the prelude to one of a more determined and daring character on the Attorney-General by O'Connell himself. The occasion which provoked it was the vacancy in the Court of King's Bench caused by the death of Judge Jebb, and the fears entertained by O'Connell that Blackburne would be offered the seat. He hoped, by boldly assailing him individually, to cast such discredit on him as to deter the government through fear from making the appointment.

Accordingly, in August 1834, shortly after Mr. Serjeant Perrin's speech in the House of Com-

mons, a series of letters (with one of which alone we propose to deal) were commenced by O'Connell, addressed to Lord Duncannon, at the time Home Secretary.[1] His grounds for the impeachment of the government were numerous. We intend, however, to refer merely to those which related to the Attorney-General. Having abused in turn Lord Anglesey, Lord Plunket, Chief-Baron Joy, and Chief-Justice Doherty, O'Connell pours forth the chief vials of his wrath against the Attorney-General in the following:—

"The third fault was not merely a folly; it was a crime. The office of Attorney-General became vacant—an office of enormous emolument in the hands of a prosecuting Attorney-General, and of the very first political influence. It is, you well know, the most important office all to nothing in the administration of the government of Ireland—consulted upon everything—advising, guiding, directing everything. The Irish government is identified with the Attorney-General. It is not of so much importance how the other offices are filled if the Attorney-General be a man of sound principles.

"This was the prime, the lasting, the continual

[1] Letter to Lord Duncannon, Darrynane Abbey, August 30th, 1834. Vide *Saunders' Newsletter*, Sept. 4th, 1834.

blunder of the Whigs. They selected for their Attorney-General Francis Blackburne! You know him well. I appeal with confidence to the opinion you must give your colleagues in the confidence of official intercourse. I appeal to your opinion as I would to your oath in a court of justice for the truth of this assertion, that so unhappy and fatal a selection was never yet made.

"Of all the members of the Irish bar, the very worst choice that could have been made by the Whigs was that of Blackburne. I care not what other barrister you name, I defy you to name one whose appointment could be more unfortunate for the Whigs—that is, if their object was to conciliate the people of Ireland. If, indeed, their object was to provoke and to exasperate the people—then indeed they did right to select Mr. Blackburne. They could not possibly have devised any measure more calculated to excite popular resentment and indignation against them. They could not, in short, have better proclaimed hostility against the people of Ireland.

"Why was Mr. Blackburne chosen to be the principal instrument of the Whig government? The history of his life seemed to forbid such a choice. It is quite true that he had been successful in his profession, his reputation as a lawyer

considerable — an over-rated man, certainly, but a man of high standing in his profession; but then he was the most constant and decided enemy of both the Whigs and of the people.

"By a singular fatality, the first act of his political life was one of marked hostility to the Whigs when that party were in power in the year 1806 [referring to the address to Curran, with which we have already dealt].

"His political career since was perfectly consistent with such a beginning. He enrolled himself a member amongst the virulent and vexatious saints of Kildare Place. He was also a constant attendant at those Bible-meetings and tract societies, at which the religion of the people of Ireland and the people themselves were the subject of every species of vulgar ribaldry and abuse.

"He was besides the chosen and standing orator of those scenes of good feeding and bad politics —the corporation dinners. You know that these dinners were and are the rallying-points of all that was and is violent and bigoted in the Irish metropolis. At these dinners, for years, Blackburne filled the station which Shaw now occupies, and his tirade against 'Pope and Popery' proved a regular part of each entertainment.

"Yet it was this man—fresh from the oratory of bigotry, and from signing the last and worst petition against Emancipation — that Lord Anglesey appointed Attorney-General!!! Yes, my lord, it is this very man — the anti-Whig, the no-popery orator, the Bible and tract calumniator, the enemy of Emancipation—that you, Lord Duncannon, you yourself, Secretary as you are for the Home Department, this is the man you and your present colleagues continue in the office of Attorney-General!!! Oh! shame upon you, if in this particular, at least, you do not give the people of Ireland a proof that you are sincere. . . .

"I need not remind you of the active patronage which your Attorney-General has afforded to the most Orange part of the Irish bar. But you, my lord, know him — you know him well — and you must feel that you cannot preserve any species of character unless you, without any delay, either change your Attorney-General, or resign.

"As I proceed in this chapter, I will notice his prosecutions — prosecutions contrived to raise a wall of eternal separation between the popular party in Ireland and the ministry. It is true that those prosecutions had the sanction of Mr. Stanley and of Earl Grey; but recollect it is the

faults and crimes of the Whigs I am commenting upon, and not those of their Attorney-General. I blame them for selecting a political enemy both of the Whigs and of the Catholic people of Ireland; I blame them for placing in this important office one of the most virulent of the Orange Tories of Ireland. I blame not him for labouring in his vocation, and serving his friends openly as he has done under the banners of his political enemies and with their authority.

"Have you, my lord, inquired into the prosecution for murder in the county of Kildare, in which the accessory was executed, and the alleged principal not brought to trial? For heaven's sake inquire into that case: I dare not commit the publisher of this letter by stating all that is believed on that subject.

"Have you, my lord, inquired into the cause of the murder of a Catholic, perpetrated by some Orangemen, and tried at the last assizes for Carrickfergus. The principal in that horrid outrage was arrested before the spring assizes, and indicted there for murder under the directions of Mr. Serjeant Perrin, who conducted the prosecutions on the circuit for the Attorney-General. Well, that indictment was quashed in the necessary absence at

the last assizes of Serjeant Perrin, and an indictment for manslaughter substituted! The prisoner was convicted; and the Chief-Justice, in passing sentence, expressed his surprise at the trial being for manslaughter, declaring that the case was murder. This was the more inexcusable and indefensible, because on the indictment for murder, the verdict may be, and in practice most frequently is, of manslaughter, if upon the evidence the case turns out to be one of manslaughter only. But the reverse cannot take place—there cannot be a conviction for murder on an indictment for manslaughter. Have you inquired how this prosecution was mismanaged under the control of the Attorney-General's officer—that is, by himself, or by the counsel or agent who represented him on the trial? . . . .

"Have you inquired into the insults offered to Catholic jurors in the prosecutions carried on through your Attorney-General, as reported to the House of Commons by Serjeant Perrin and Mr. More O'Ferrall? But why should I weary you with these questions? I appeal to your common sense whether there be any possibility of reconciling the popular party in Ireland with the ministry, so long as you continue in office so decided a political enemy of both as your Attorney-General."

He concludes this tirade as follows:—"I am ready to aid in the perfect reconciliation of the people with the ministry. But I have neither the power nor the inclination to do so unless you will confer on that people not sweet and soft words, but substantial and distinct acts of friendship and protection. Until Parliament meets, we require that you will discountenance and dismiss your and our enemies,—that you will govern by and through our and your friends. Sacred heaven! that it should be necessary to make such a request of any men not confined within the walls of Bedlam."

At first sight, it seems to be very questionable whether we ought to have adverted in any way to this letter, much less have brought it to light after the obscurity in which it has lain for so many years; but we think it impossible to avoid doing so. The character of the Attorney-General as a public man was fiercely assailed, and the vituperative attack of O'Connell, although at the time apparently disregarded by the government, had afterwards (as we shall presently see) a serious effect in preventing Lord Melbourne from keeping his deliberate engagements.

We shall proceed, therefore, to reply very briefly

to the several charges, and point out their unfair and unjustifiable character. The first count in the indictment, as we may style it, was that, although Blackburne was successful in his profession, he was "an over-rated man." O'Connell, in putting this forward, appears to have forgotten the evidence which he gave before a committee of the House of Commons in 1825 on his examination as to the state of Ireland. In answer to the question, "Have any gentlemen who were junior to you been appointed King's Counsel?" he replied, "Very many. The greater part of the practising King's Counsel are my juniors and two of the judges. It *is* right to make a junior to me King's Counsel, of course; but I do not know of any junior who is put over my head who has as much business as myself. Mr. Blackburne is my junior; certainly high in the profession, but that could never create a jealousy in my mind. He is one of the best lawyers in the profession." This was O'Connell's statement in 1825: his opinions, however, changed when it suited his purposes.

We have already, in a former part of this work, disposed of the second charge, viz., that of having made a "violent attack upon the Whigs," at the time of Ponsonby's and Curran's promotion, and pass

on to the next, which is rather of a curious character, viz., that of having "enrolled himself as a leader amongst the virulent and vexatious saints of Kildare Place," and that he was "a constant attendant at Bible-meetings and tract societies."

An ordinary reader of this paragraph would suppose that "Kildare Place" was a species of "Exeter Hall," and the arena for polemical disputes, the fact being that the society in question was the forerunner of national education, and one which had, up to the time of the withdrawal of the public grant, conferred great and substantial benefits on the country.

Blackburne no doubt was a warm supporter of the "Kildare Place" institution, but he never attended its meetings; and although an original subscriber to the funds of the "Hibernian Bible" Society, he on one occasion only took part in its proceedings. In truth the state of his business precluded the possibility of his being able to attend any meetings whatever.

Passing from this, the next ground of attack is that of his having been "the chosen and standing orator" of the old Dublin Corporation, at their "scenes of good dinners and bad politics." The charge was

simply false. He had up to the period dined but twice with the body, and had spoken but once; and the occasion of his doing so was when the health of the bar was given, and he, as the senior member of it present, returned thanks. So far from being regarded with favour by the Dublin Corporation, the fact was quite the reverse. He was viewed by it rather with feelings of dislike than otherwise, for he had conducted against it a suit in Chancery on behalf of the citizens of Dublin, and, after a twelve years' contention, had succeeded;[1] and this was never forgotten, and we might add forgiven.

The next charge is, that he "signed the last and worst petition against Emancipation." We are not aware that he ever did sign any petition against Emancipation; his whole previous career, and the objection which he entertained to taking a prominent part in politics, would rather lead to the opposite conclusion; assuming, however, the fact to be as O'Connell had stated, and that he was opposed to Catholic Emancipation, how did the question stand? The opinion which he entertained (which was that of many others also) was, that the measure would not prove a panacea for the evils of Ireland—evils too deeply rooted to yield to any treatment of the kind:

[1] *Vide* Clark and Finnelly's Reports, vol. iii. p. 289.

and he may, too, have doubted the sincerity of promises which were made only to be broken.

He knew the character of the Roman Catholic religion; that with fresh concessions there would be fresh demands, which might be, with more justice, termed encroachments—that the cry of civil and religious equality was mere pretence, because history and experience both had taught that the Roman Catholic religion could neither tolerate nor recognize an equal, and his far-seeing sagacity therefore told him that it was not by means such as the Catholic Relief Bill that Ireland was to be pacified: has the result shown that he was wrong?

Expediency was the chief (we might add almost the only) ground upon which its advocates supported the question of Catholic Emancipation. It was the price to be paid for securing the tranquillity of Ireland. Pitt,[1] in his letter to George III. in 1801, immediately after the passing of the Union, expressly puts it on this ground, and on this ground alone.

He writes as follows: "The admission of the Catholics and Dissenters to Parliament (from which latter the Dissenters are not now excluded), would, under certain conditions to be specified, be highly advisable, with a view *to the tranquillity and improvement*

[1] *Vide* the *Quarterly Review*, vol. xxxvi. p. 290.

of Ireland, and to the general interest of the United Kingdom. For himself, he is, on full consideration, convinced that the measure would be attended with no danger to the Established Church or to the Protestant interest in Great Britain or Ireland; that, now that the Union has taken place, and with the new provisions which would make part of the plan, it would never give such weight in office or in Parliament, either to Catholics or Dissenters, as could give them any new means, if they were so disposed, of attacking the Establishment."

After some further observations, he adds: "It is on these principles Mr. Pitt humbly conceives a new security might be obtained for the civil and ecclesiastical constitution of this country, more applicable to the present circumstances, more free from objection, and more effectual in itself, than any which now exists, and which would at the same time admit of extending such indulgences as must conciliate the higher classes of Roman Catholics, and by furnishing to a large class of your Majesty's Irish subjects a proof of the goodwill of the united Parliament, afford the best chance of giving full effect to the great object of the Union—that of tranquillizing Ireland, and attaching it to this country."

To come down to the period of the passing of

the Emancipation Act, what was Sir Robert Peel's language when introducing the measure? "I will not prophesy," he said,[1] "what will be the ultimate effect of the measures which I propose, but the true recommendation of them I apprehend to be, that it is scarcely possible we can change for the worse. What is the melancholy fact?—that for scarcely one year during the period that has elapsed since the Union has Ireland been governed by the ordinary course of law. . . . . Shall this state of things continue without some decisive effort at a remedy?" And in concluding his speech, he says:[2] "Perhaps I am not so sanguine as others in my expectation of the future, but I have not the slightest hesitation in saying that I fully believe that the adjustment of this question in the manner proposed will not only give better and stronger securities to the Protestant interest and the Protestant Establishment, than any that the present state admits of, and will also avert evils and dangers impending and immediate. . . . . I well know I might have taken a more popular, a more selfish course; I might have held language much more acceptable to the friends with whom I have long acted, and to the constituents

[1] "Hansard," vol. xx. N.S. p. 742.

[2] Ibid., p. 778.

whom I have lately lost. In the course I have taken I have been mainly influenced by the anxious desire to provide for the maintenance of Protestant interests, and for the security of Protestant Establishments. . . . . This is my defence; this is my consolation; this shall be my revenge."

Such were the views of the two great statesmen—of the one who urged on George III. the measure of Catholic Emancipation; and of the other who carried it. It was put forward by both as a remedial measure, and not as one of right or of justice.

Its opponents, on the other hand, contended that as such it would fail; they said: "What are we to expect from throwing open the portals of the legislature to the entire Catholic body? What but this, that the advanced work now gained will become the salient angle from which the fire will be directed on the body of the fortress, and that the work of agitation, headed by the Romish leaders in either House of Parliament, will be renewed with increased vigour to effect the overthrow of the Protestant Establishment—the severance of the Union—the dismemberment of the British empire."[1]

It would be opening too wide a field to enter

[1] Alison, "History of Europe," vol. iv. p. 168.

further on the history of Ireland in connection with the question of Catholic Emancipation. Subsequent events have, however, shown that as "a healing measure" it lamentably failed in its object. We have already seen to what condition the country was reduced in the short period of five years after the passing of the act; and that England, so far from having secured the gratitude or goodwill of the people, was told that the granting of the measure was owing altogether to fear, and had been wrung from her by terror, and not from a sense of justice.

The condition of Ireland has ever since continued to be a source of perplexity and of difficulty to successive statesmen. Other "soothing" measures have been tried, but with the same results. England is still compelled to resort to stringent and (what are in truth) unconstitutional measures for the repression of crime and for the preservation of order; and we do not hesitate to assert (for we are borne out by the "inexorable logic of facts") that the feelings of the great mass of the people are as disaffected to her as they ever were. For although, owing to the increase of prosperity (to which many circumstances have contributed), there may be less display of the ill-will which subsists, nevertheless

the fact remains that all the efforts to conciliate have been found to be perfectly nugatory.

Enough has been written to show that it cannot be matter of surprise, much less a just ground of censure, that Blackburne should have entertained the opinion that finality would not be gained by passing the measure of Catholic Emancipation, or that it would prove efficacious either in allaying the angry feelings which agitation had stirred, and by which the country was torn, or in engendering a better feeling towards England.

With the remaining charges brought by O'Connell we shall deal very briefly. They are of the same character as those which preceded them—*i.e.*, they have a semblance of truth, with great exaggeration —in a word, they are substantially false. Their open and undisguised virulence is so great, and the object so apparent, that we cannot help expressing our surprise that O'Connell did not make some attempt to keep in the background his real designs.

He charged Blackburne with having distributed his patronage as Attorney-General among the most "Orange part of the Irish bar." The answer to it is very short, viz., that he never during his term of office had appointed a single crown counsel; and on the very few occasions when some of the ordinary

counsel were absent, members of the circuit were retained on the part of the crown merely from a regard to their professional character and ability, and from no other consideration.

With respect to his next statement, he appears to have fallen into a mistake of law. He asks: "Have you, my lord, inquired into the prosecution for murder in the county of Kildare, in which the accessory was executed and the alleged murderer not brought to trial?" In point of law the crown counsel were right.[1] The facts were very shortly as follows:—

There was abundant evidence to convict the accessory, although at the time the counsel for the crown thought that the evidence against the principal was not sufficient to warrant the expectation of a conviction. The accessory was proved to have attended two distinct meetings of sixteen or seventeen persons, who drew lots to decide by whom the murder should be committed; and there was good reason to believe that he and the whole body were present at the commission of the crime, though there was not any legal evidence of it.

The gravamen of the next charge appears to be that, through the mismanagement of the Attorney-

[1] Vide Hawkins' Pl. Cor. 8th edit. vol. ii. cap. 29, sect. 45.

General, or of the crown counsel acting by his directions, an Orangeman, who was charged with the murder of a Roman Catholic, was put upon his trial for the lesser offence of manslaughter, an indictment for murder which had been found at the previous assizes having been quashed; and that the Chief-Justice, in passing sentence, expressed his surprise that the prisoner had not been indicted for murder.

Had this charge been true, it would have been, of course, a matter for grave investigation on the part of the government. But the facts were the other way. The Attorney-General had nothing whatever to do with the matter: the crown prosecutor, on his own responsibility, and without consultation, had elected to withdraw the charge of murder, and had substituted instead that of manslaughter. That he exercised a wise discretion in doing so is borne out by the fact that the principal was sentenced, not to transportation for life, but for a period of seven years—which would hardly have been the case had the Chief-Justice, as was alleged, considered that the charge should have been one of murder and not of manslaughter.

The last and remaining ground of attack is that which is dealt with in the correspondence between Mr. Littleton and the Attorney-General, and it is

unnecessary, therefore, to allude to it further. We fear that we have wearied the patience of our readers in going through this mass of vituperation and abuse; but, as we have already said, we feel that we had no alternative.

CHAPTER IX.

Termination of the connection between Blackburne and the Whigs.—The circumstances which led to it.—His treatment by Lord Melbourne.—Refusal of Blackburne to permit at the time the facts to be made public.—Resignation of Lord Melbourne in 1841.—Return of Sir Robert Peel to power.—Blackburne re-appointed Attorney-General.—Letter of the former.—Stipulation as to Mr. Pennefather's precedence.—Blackburne's letter to Lord Stanley.—The appointment of the office of Law Adviser.—Blackburne's firmness and determination on the occasion.—Letters of the Lord Chancellor, Sir James Graham, and Lord de Grey on the subject.—Appointment of Blackburne as Master of the Rolls.—Wish of the government to have placed him in the Queen's Bench.—Letter of Lord de Grey, offering him the post of Master of the Rolls.

We have now arrived at the period when the connection of Blackburne with the Whigs was to terminate; and the account of the treatment which he received from them is not merely interesting, but suggestive. O'Connell had been rapidly gaining influence, to which the measures of Catholic Emancipation and Reform had largely contributed, while the unsettled state of parties in England tended in

no slight degree to enhance his political importance. The letters to Lord Duncannon, we think, plainly demonstrate this, for O'Connell would hardly have descended to the vituperation and misrepresentation in which he indulged if he was not well aware of the great power which he wielded, which the Whigs could not afford to disregard, and was determined to coerce the government to rule the country in accordance with his own dictates and by his own instruments.

Blackburne had proved himself a valuable servant, not merely to the country, but to the government. Indeed, it is very questionable whether, without his assistance, the latter would have been able to have made a stand against the difficulties by which they were surrounded; it was natural therefore to suppose that a feeling of gratitude, if not of obligation, would have made them act by him in the way which, upon every right principle, they ought to have done.

Before proceeding with our narrative, it is necessary to remind our readers of Blackburne's position at the time when he became Attorney-General. His political views, though moderate, were in many respects at variance with those held by the men with whom he was acting, and they were known to

be so. These views had never undergone any change. It is probable that his four years of official life had more strongly confirmed them.

When the secession of Mr. Stanley, Lord Ripon, and other members of the administration took place, which was followed by the resignation of Earl Grey, Blackburne entertained serious doubts whether he ought to continue as Attorney-General. He resolved, however, to remain. What his reasons for doing so were, we are unable to state, and are therefore left to conjecture.

We think that, in coming to this resolution, he was guided by the principles which actuated him up to almost the last hour of his life—viz. to shrink from no duty nor responsibility, and to avoid in every act of his even the semblance of a selfish or personal motive. The Irish administration had undergone no change, and he felt that he would not be justified in throwing up his post, as by so doing he might possibly seriously embarrass the government with whom he had acted harmoniously, the more especially as he felt that no principle was involved in his retaining office.

The remodelling of the Melbourne administration after the resignation of Lord Grey did not bring with it any elements of cohesion or of strength.

There were great, if not vital, differences of opinion among the members of the cabinet, and from the first it was very questionable whether its existence would be of very long duration. On one great question (that of the Irish Church), the cabinet was divided into two sections, which were quite irreconcilable.

In Ireland, too, the government had to contend with a difficulty, but arising from a different cause. It has been already stated that a vacancy in the Court of King's Bench had taken place by the death of Judge Jebb. This post, although the undoubted right of the Attorney-General, (we believe we are correct in saying) was not then usually accepted by men holding that position, and accordingly we find the Lord-Lieutenant, in offering Blackburne the place of puisne judge, making rather an apology for doing so.

After stating to him that the government were very sensible of the value of his services, and after admitting his undoubted right to the office of a chief judge on the first occasion of a vacancy, and that this should be secured to him, his Excellency wished to know "whether, if it effectuated the object of the government that he should, in the first instance, accept the vacant seat, he would consent to do so." To which he replied, "that it was his

duty and wish to forward the objects of the government, and that he would accept the vacant seat."

Hopes, too, were at the time entertained that a second puisne judge's place would be at the disposal of the government, which would thus have relieved them from difficulty by the promotion of the Solicitor-General to it.

In the ordinary course, the Solicitor-General would have succeeded to the higher post of Attorney-General. But Mr. Serjeant Perrin—a firm supporter of the government, who was next for promotion, and whose political influence was considerable—refused to permit Crampton to be placed above him, giving as his reason for the refusal that he did not choose to vacate his seat in Parliament for any office lower than that of Attorney-General; and the government could not afford to disregard his objections, or to pass him by.

Their expectation of procuring the second seat was, however, disappointed. It was found impossible to obtain it, and they were obliged to request Blackburne to give up the post which he had accepted, and to continue Attorney-General. The Lord-Lieutenant, therefore, asked him "if he would pass the present vacancy and accept the next," to which he replied, "that the request came upon him by surprise, and that he wished to consider it; that

his conduct would appear inexplicable in declining the present seat, and in a short time accepting a similar one."

There was also another obstacle which prevented his acceding to the request of the government. He was unwilling to be a mere *locum tenens* for Serjeant Perrin, which would have been the consequence of his complying with the proposition of the government to retain office until a second vacancy should occur.

Eventually, at a subsequent interview, the Lord-Lieutenant stated that it was the wish of himself and of the government that Blackburne should continue to hold his office, and that the post of judge should be offered to the Solicitor-General; that the former's services were highly appreciated; and that neither he nor (and he could answer for it) would any member of the government offer him any indignity (this, we infer, alluding to his being *locum tenens* for Perrin); that they all felt what was due to him, and that his Excellency deemed himself bound to offer for his acceptance the first seat on the bench which should be vacant, whatever it might be; that he should be at liberty to accept or reject it; and that he was to continue in his post as Attorney-General, unfettered by any stipu-

lation whatever. Under these circumstances he agreed to resign the post of judge, and to continue to hold his office of Attorney-General.

The gratitude of the government apparently knew no bounds. Lord Melbourne requested the Lord-Lieutenant to convey to the Attorney-General the expression of his own feelings, and those of his colleagues, for the generosity of his conduct, and also to acquaint him that his Majesty had been put in possession of the facts, and had concurred in the estimate which had been formed of his conduct on the occasion.

Blackburne remained Attorney-General until the dissolution of the Melbourne administration which took place very shortly afterwards; and having deemed it his duty to place his resignation in the hands of the government through the Lord-Lieutenant, received from the latter the following:—

"PHŒNIX PARK, *November 19th*, 1834.

"SIR,—I have received the honour of your letter of the 18th of November, signifying your desire that I should submit to his Majesty in terms of dutiful and respectful deference your resignation of the office of Attorney-General for Ireland. I shall not fail to submit your letter to his Majesty's

consideration. It is necessary for me to add my earnest wish that you should continue to discharge the duties of your high office, until you shall receive a notification of his Majesty's pleasure on the subject of your request. I cannot conclude without returning to you my sincere thanks for the great ability, zeal, and integrity with which you have discharged those duties during my government in Ireland. It has been a great satisfaction to me on several occasions to have been the channel of announcing to you the entire approbation of his Majesty's late government.

"I have the honour to be, Sir,

"Yours most faithfully,

"WELLESLEY."

As Blackburne's political views were known to be much more in accordance with those of the Conservative party than of the Whigs, his friends doubted very much the prudence of his having, under the circumstances, tendered his resignation; considering that by so doing he placed himself in an antagonistic position with men whose opinions coincided with his own. Accordingly we find the Lord Chief Baron (Joy), who was one of his

earliest and most intimate friends, writing to him as follows :—

"*November* 1834.

"MY DEAR BLACKBURNE,—I have been considering the propriety of your resignation, and though I cannot but applaud the motive which actuated you, I am strongly inclined to doubt the prudence or propriety of the act. Those to whom I have spoken of it consider it as an announcement that you are become a Whig—and that this will be generally considered so I have little doubt: thus the way you have taken to avoid any imputation on your political character will be that which in the eyes of many will confirm it. Add to this (what some of my brethren suggested) that the King having expressed his strong sense of your services, and no inclination to reject those services, but rather a wish to avail himself of them, your act may be deemed not respectful to his Majesty, and as preferring to show your gratitude to Lord Melbourne to showing it to the King. I wish you had deliberated a little longer on it. But it cannot now be helped. If the new administration should offer the place to you (which I think not improbable), you cannot with any propriety refuse to accept it, unless you

are determined to attach yourself to the Whigs irreparably.

"I am my dear B.,

"Yours very truly,

"H. JOY."

The anticipation of the Chief-Baron proved to be correct, as Sir Robert Peel requested Blackburne to retain his office, Mr. Edward Pennefather being appointed Solicitor-General.

The Peel administration was destined to be of but short duration, the combination of the Whigs with O'Connell proved too powerful, and after a few months it succumbed to a hostile vote of the House of Commons. Lord Melbourne was recalled to power, the *materiel* of his cabinet (with some few exceptions) being very much the same as that of the former. Blackburne retired from office with the other members of the Irish government, and his past services and the sacrifice which he had made were forgotten by Lord Melbourne.

No doubt he felt that, by having continued in office under Sir R. Peel, his relations with the Whigs would undergo a change; but he certainly did not think that that change was of such a

character as to lead to a forfeiture of that specific right, of which, for the accommodation, and at the instance of the government, he had waived the exercise.

Post after post on the bench became vacant during the premiership of Lord Melbourne, but the man who had so faithfully served him—to whom both he and the country owed so much, and who had in so disinterested a manner extricated the government from the difficulty in which it was placed—was permitted to fall back into the ranks of the profession of which he had been so long the head.

Nay, more; it had been customary, up to the period of which we are writing, to offer to the law-officers of the crown who had retired, patents of precedence, giving them rank after the Attorney and Solicitor-General; and accordingly Lord Plunket intimated to Blackburne and Pennefather his intention of recommending to Lord Mulgrave (the new Lord-Lieutenant) to grant them patents of precedence, should they wish for this mark of distinction.

Both signified their assent; but nothing more was done. The influence of O'Connell was too powerful. Blackburne had dealt him too heavy a blow ever to be forgiven, and this token of recognition was

withheld from the man who, according to the statement of a member of the former administration, "had rendered them services which no other person could have done."[1]

Lord Melbourne's reason for acting thus towards Blackburne was shortly this,—viz., that he considered that, by taking office under Sir R. Peel, he had severed the ties which had previously bound him to the party, and by doing so, left both mutually free to act.

This is, we submit, no defence or palliation whatever of the breach of good faith, which ought in public as in private affairs to subsist between men. We have already seen that at the time that Blackburne took office as Attorney-General his political views differed in many respects from those of the party under whom he had consented to serve. The letter of the Chief-Baron affords abundant proof of this, and Lord Melbourne, therefore, was aware that Blackburne, in taking office under Sir Robert Peel, was violating no principle, but was acting with one whose opinions coincided with his own.

But, rightly considered, the question whether he had changed his opinions and deserted the party forms no excuse for the treatment which he received.

[1] Mr. Stanley.

We cannot say (if we except what took place at the interview with the Lord-Lieutenant, and the subsequent letters of Lord Melbourne, to which we have referred) that any actual pledge was given or promise made by Lord Melbourne; but there can be no doubt that there was as distinct an understanding and compact as if it had been made in writing, that if Blackburne surrendered for the purposes of the government the right which he unquestionably had, he should, in return, be placed in a similar, if not better, position by doing so. The transaction was one of the past: he had yielded to the necessities of the government, and complied with their request.

So far, therefore, as he was concerned, the consideration had been given, and it remained for Lord Melbourne, when the occasion offered, to do the rest, and to fulfil the obligation by which, on every principle of fair and honourable dealing, he was unquestionably bound.

We deem it but right to the memory of Lord Melbourne to say that we believe that, professing as he did the warmest sentiments of admiration for Blackburne's fidelity and ability, he would have acted differently had he been a free agent. He was, however, bound to O'Connell and to his followers, whose

animosity to Blackburne was unbounded, and was unable to loose himself from the thraldom by which he was held.

The whole transaction led, of course, to many false and conflicting statements. But Blackburne declined to have its true character made public, because, although deeply hurt by the treatment which he had received, and mortified by the slur and personal indignity offered to him in withholding the patent of precedence, he was unwilling to annoy or embarrass Lord Melbourne.

From the date of the resignation of Sir R. Peel, in 1835, until 1841, Lord Melbourne, supported by O'Connell and the Irish "tail," as it was styled, remained in power, during which period Blackburne, thrown back into the ranks of the bar, continued to be one of its leaders. The loss of the patent of precedence does not appear to have been of any injury to him, as, with very few exceptions, he was in receipt of the largest professional income at the bar: one, moreover, greater than he would have enjoyed had he been promoted to the bench.

The petty indignity which it was hoped would have the effect of doing him injury failed in its object; and although his juniors in point of standing were placed above him, his great reputation

as a lawyer more than compensated for the loss of position at the bar.

The country at last grew weary of the incubus of the Melbourne administration, and in 1841 Sir R. Peel a second time resumed the reins of government, and placed, by the following letter, the office of Attorney-General again at Blackburne's disposal:—

"*Private.*

"WHITEHALL, *September 11th*, 1841.

"DEAR SIR,—I have received the sanction of the Queen to propose to you the appointment of Attorney-General in Ireland, and I earnestly hope that this proposal will be acceptable to you. I assure you that no appointment could be made which would give greater satisfaction to my colleagues and myself, and to those to whose hands the government of Ireland has been committed by her Majesty. Mr. Pennefather has been prevailed upon (but not without great hesitation and reluctance on his part) to resume the office of Solicitor-General, I have found it necessary to propose it to him on the understanding on which he consented to accept it in 1834–5, and to which you were at that time a willing party. I hope I have not been in error

in presuming that you would still be influenced by the same feelings which prompted your acquiescence in the former arrangement.

"I have the honour to be, dear Sir,

"With great esteem,

"Your faithful servant,

"ROBERT PEEL."

In order to explain the latter part of Sir Robert Peel's letter, in which he refers to an "understanding" which had been agreed on on a former occasion, it becomes necessary to state more particularly the circumstances under which Blackburne became Attorney-General under the administration of Sir Robert Peel in 1835, and which are fully set out in the accompanying letter, which, although without address or date, bears internal evidence of having been written by the former to Lord Stanley, and in the year 1841. We are unable to explain what the "crisis" was to which he alludes, or to give more fully the particulars of the "arrangement" which took place at Mr. Pennefather's bedside; but it is unnecessary for our purpose (which is

merely to throw light on Sir Robert Peel's letter). The following is the document:—

"I will not apologize for addressing your lordship on matters which concern myself personally, because I am assured that you willingly learn what I have to detail; and it may be important to me that at this crisis some one in the confidence of the government may know under what circumstances I accepted office under Sir Robert Peel.

"I would, however, guard myself against the idea of soliciting your lordship's interference for me. I am confident that no such appeal to you is necessary, and that, were I altogether silent, I should not be forgotten. In the following facts your lordship will see reason to think that, however important it may be to advise with unofficial persons, it is better not to intrust them with the power to make or modify arrangements for appointments to the bar. But it is better to go at once to the facts, and this I shall do shortly and (I can pledge myself) accurately.

"The first intimation which I had on the subject of my appointment to be Attorney-General (*i.e.* in 1835) was a visit from Mr. Shaw, who announced to me that he had, in fact, a *carte blanche* as to that and the office of Solicitor-General; that he

wished, in the first instance, to know if I would take office under the government. I asked him how your lordship would act. He said you would not take office; but that Sir Robert Peel was assured that, as far as was possible, you would be friendly, and certainly would not oppose his government.

"I at once replied that I would take office. He then said that Lefroy had been promised in England the place of Master of the Rolls or that of Chief-Baron, whichever was first vacant, and that whoever was Attorney-General must take office, knowing that this was a fixed arrangement. I said, 'that, of course, the right being with the government, any person taking the office of Attorney-General could not complain of its being carried into execution.' He then added that Pennefather was the first object of the government; but that it was of great importance to them to have my services; and as I could not be Solicitor-General, their object was to continue me in my office of Attorney-General, and make Pennefather Solicitor, and that Pennefather acceded to this, but that he or Shaw (I cannot say which) wished to stipulate with me that, reserving Lefroy's rights, Mr. Pennefather should have the offer of the first vacancy on the bench.

"'To this stipulation,' I said, 'I was not prepared

to accede;' and after some further conversation, I told him that I would meet him at Pennefather's the next day, and in the meantime see Joy (the Chief-Baron), and advise with him as to the propriety of making a contract binding myself to relinquish the fair right of the office; and indeed I felt that his proposal for a contract—originating, as it did, on this side of the water—was a matter in which I ought not to engage (if at all) except with the concurrence of the best and ablest of my friends.

"I went to Joy, and put the matter before him. The result was, that he advised me not to make any engagement whatever, but that I might, with perfect propriety, take the office, with notice in this, as in the case of Lefroy, of the intentions of the government, leaving myself free to act thereafter as my own feelings or circumstances might render right.

"The following day I met Shaw at Pennefather's; he was in bed then and for months afterwards, confined by gout, and then the matter was finally arranged; and certainly I could not have complained had Pennefather had the benefit of it; that I would not, is obvious from this—viz., that I was exerting myself to have Pennefather put upon the bench at the time that the 'appropriation' clause

expelled the ministry; and let me add that, deferring (as the profession does) to the superior talents of my invaluable friend Pennefather, I was the last man living with whom it was necessary to stipulate for giving him precedence; and I cannot avoid saying that, with these feelings and opinions, I was hurt at the whole mode of conducting this matter.

"But I have now done, and your lordship is near the end of this long letter, of which, however, the part which remains gives me the most sincere gratification—viz., to write my ardent congratulation on the return of your lordship to the government of the concerns of this mighty empire; no one hails it with more delight, or with stronger anticipations of great public benefit, than I do."

We have been unable to find any reply to the above, and merely give it as containing an accurate account of the "understanding" to which Sir R. Peel alluded.

Blackburne's letter sets out so fully and at such length the circumstances, that, were it not that one or two topics are suggested by it which call for some observation, we should feel ourselves justified in leaving the subject without further comment.

We pass by altogether the fact of such high negotiations as were involved in the disposal of patronage

having been intrusted to a non-official personage, as that has been already dealt with, and come at once to what are the material points.

Some of our readers, from perusing the foregoing, may be disposed to cavil at the course taken by Blackburne, and may consider that, under the circumstances, a man in his high and assured position should have declined to enter into any arrangement, or be a party to any compact of the kind.

Before arriving at a conclusion upon a question of such delicacy, however, it becomes necessary not merely to examine accurately the attendant circumstances, but also the character of the man whose course of action forms the subject of criticism, the more especially if it differs from that which men would usually take if similarly situated. For we very much question whether there are many who (having laboured in the public cause with such unwearied diligence, and so successfully as he had done) would be willing to surrender in favour of another the justly-earned rewards of their labours and services.

The confessedly great reputation of Pennefather; the strong personal friendship which subsisted between them; and (we may add) the fact of his seniority at the bar, were the causes which led

Blackburne to forego his rights, and to surrender them in his favour.

These were no doubt strong impelling motives, and calculated to go a long way in overcoming the feelings of self-interest or self-advantage; but we are by no means sure that, without the further element of a noble and disinterested character, they would have been sufficiently powerful to subdue the considerations which we have named.

The character of Blackburne, however, was such that it would have been foreign to his nature to have acted differently: a thoroughly unselfish man, with a mind capable of grasping great things, he was, as we have already said, unable to stoop to any small or personal considerations.

There was, too, another feature in his character which may have had no inconsiderable influence in causing him to surrender his right. Of a retiring and modest disposition, we do not think that he estimated at their true value his great talents, or the high position which he held in the public estimation, and therefore at once yielded his claims in favour of one who was assumed to be his superior.

A question of a different character remains—viz., whether Sir Robert Peel ought, under the circumstances, to have made any terms whatever. It is to

be observed that, in Mr. Shaw's first communication with Blackburne, he intimated that he held "a *carte blanche*" with respect to the appointments of Attorney and Solicitor-General; and we have a right, therefore, to assume that he possessed the full confidence of Sir Robert Peel, and was aware of his views and sentiments on the subject.

From Blackburne's letter, it does not appear whether the suggestion as to Pennefather's precedence came from him or from Mr. Shaw, but it matters little which way it was, because, in the subsequent letter of Sir R. Peel in 1841, in which he invites Blackburne again to undertake the office of Attorney-General, he adopts and assents to that which had been done in 1835.

By making terms with Blackburne, he placed him in an awkward, if not in a most unpleasant position; and we cannot help saying (in leaving the subject) that, in treating with such a man, it would have been more in accordance with what was due to his name and character to have requested him to continue in office as Attorney-General, untrammelled by any understanding or stipulation whatever.

Reappointed Attorney-General, the firmness and independence of character of Blackburne again

showed itself as it had so often done previously. On the arrival of Lord de Grey as Lord-Lieutenant, the only legal office not filled up was that of Law-Adviser to the Castle. The post is one, on the appointment to which it is peculiarly the province of the Attorney-General to advise, as the person holding it is brought into intimate communication with the other law-officers of the crown, and should, therefore, be a man on whose efficiency and knowledge they could rely.

Accordingly, on the day of Lord de Grey's arrival in Ireland, he requested the Attorney-General to wait on him after the levee, and then intimated that he wished to consult him on the subject of the appointment of Law-Adviser, and requested him to name the person who, in his opinion, was best fitted for the post.

He named Mr. Brewster, at the same time stating that he regretted that the absence of the latter abroad would render it impossible to have any reply on the subject for some time, as he doubted whether the sacrifices which the acceptance of such an office involved might not induce him to decline it, but that he would endeavour to overcome his scruples and objections. The Attorney-General was thereupon authorized to communicate with him and also with

the Lord Chancellor (whose sanction to the appointment was necessary).

These communications we are unable to give, as copies of them do not exist; but from a memorandum of Blackburne's, written at the time, we take the following. After referring to the interview with the Lord-Lieutenant, he says :—

"On that day I accordingly wrote letters both to the Chancellor and Mr. Brewster. Of neither have I a copy, nor do I recollect the terms of the letter in which I conveyed the intention of the Lord-Lieutenant; but that I pressed Mr. Brewster to make a sacrifice of present interest to serve the public, there can be no doubt."

The following is the reply of the Lord Chancellor. It bears no date, but was evidently written on receipt of the Attorney-General's letter :—

"HOUSE OF COMMONS, *Monday.*

"MY DEAR BLACKBURNE,—I entirely approve of Mr. Brewster's nomination. I am still here, as the proper steps have not yet been completed to place me in the office of Chancellor of Ireland. I wish you would be so good as to let me know (directed to Boyle Farm), when my patent is com-

pleted. I think I shall go over for a short time as soon as I can.

"In haste,

'Yours very truly,

"EDWARD B. SUGDEN."

When the appointment of Mr. Brewster was made known, O'Connell and the press under his influence were loud in their denunciations. Charges of Orangeism, and extreme party feeling and prejudice, were made. These were believed in England, and the government took alarm. Accordingly, Sir James Graham writes :—

"*Private.*

"WHITEHALL, *September* 23, 1841.

"SIR,—I am happy to resume confidential and official communication with a gentleman whom, as Attorney-General to the government of Lord Grey, I admired as a public servant of the highest honour, the firmest aim, and most faithful integrity. At this moment I am compelled to address you hastily; but in the absence of Lord de Grey from Dublin, Sir Robert Peel and I are anxious that the definitive arrangement of the selection of a legal adviser at

the Castle should be suspended until we have an opportunity of consulting here on the subject with the Lord-Lieutenant and Lord Eliot, who will be in possession of your opinion.

"I am fully aware of the great importance of a prudent selection of a fit person to fill this confidential office. It touches the general character, and will give a colour to the tone of the Irish government; and as we stand so high in public opinion at this moment, peculiar caution is necessary in this our last appointment. I address you, therefore, in the strictest confidence, and anxiously hope that nothing irrevocable has as yet been done in the matter; and if not, I request that you will suspend the nomination till you hear further from hence.

"I have the honour to be,

"With sincere respect, Sir,

"Very faithfully yours,

"JAS. S. GRAHAM."

We are unable to state what reply the Attorney-General gave to the above letter. It is plain, however, that the government continued in a state of great perturbation, and seriously doubted whether

they would ratify Mr. Brewster's appointment; for on the 25th of September the Lord Chancellor writes:—

". . . . I find that the appointment at the Castle is not yet settled. It is certainly one which requires full consideration, although, as I understood that the arrangement was made, I did not hesitate to approve of it, from my conviction that you would name none but a fit person. We can talk this matter over when I have the pleasure to see you in Dublin.

"Yours very truly,

"EDWARD B. SUGDEN."

A few days afterwards the Lord-Lieutenant writes:—

"*Confidential.*

"ST. JAMES'S SQUARE, *September* 28, 1841.

"SIR,—Immediately upon my arrival in town this day I lost no time in communicating with Sir Robert Peel and Sir James Graham respecting the appointment of Mr. Brewster. In the interview which I had the honour of holding with you when Mr. Brewster's name was first mentioned, I stated very explicitly that, as I was personally a stranger to every member of the Irish bar, I would not

presume to make any selection on my own judgment, but must submit the question to those better acquainted with the subject than myself. You observed that you had your doubts whether Mr. Brewster would readily accept the office if offered; and as he was abroad, and could not be immediately communicated with, and as, if he should decline accepting the offer, it would be futile in us to be attempting arrangements at home, I requested you in confidence to sound him as to his willingness, but at the same time carefully guarding myself against any sort of pledge or assurance of actually conferring the office upon him. I cannot help thinking, therefore, that he must have misunderstood some expression in your letter. But as matters stand at present, I wish that, during the absence of the Lord Chancellor and of Lord Eliot, the duties of the office should continue to be performed *ad interim* by the gentleman who now executes them, and that any final arrangements should be postponed till I can return to Dublin and consult with the officers above named.

"I have the honour to remain,

"Your obedient servant,

"DE GREY."

The Lord-Lieutenant seems to have forgotten the precise character of the conversation which he had with the Attorney-General, and also the fact of his having given him authority to write to the Chancellor to sanction the appointment, thus admitting that, so far as he was concerned, he concurred in it if the difficulty arising from Mr. Brewster's probable objection was removed.

Although Mr. Brewster had signified his willingness to accept the appointment, no further steps appear to have been taken in the matter until after the arrival of the Lord Chancellor in Ireland. The Attorney-General, at an interview with him, having pointed out the groundless character of the imputations against Mr. Brewster, vigorously resisted the desire of the government to cancel the appointment, and intimated to the Lord Chancellor that he would not tolerate the refusal to ratify it. Accordingly, shortly after the return of the former to England, the Attorney-General received the following:—

"ST. JAMES'S SQUARE, *October* 8, 1841.

"SIR,—I have availed myself of the first moment to confer with the Lord Chancellor on the subject of Mr. Brewster, and at my request he writes to you by this post to say that, having considered the

question in all its bearings, I have decided to confirm the appointment.

"I remain, Sir,

"Your obedient servant,

"DE GREY."

The following letter of the Chief Secretary closes the correspondence on the subject :—

"PHŒNIX PARK, *October* 10, 1841.

"DEAR SIR, — A letter which I received this morning from Lord de Grey informs me that he has authorized you to confirm, without delay, the appointment of Mr. Brewster. This being the case, it is unnecessary for me to express, or even to form any opinion on the subject, and I therefore return to you the paper which you were so good as to place in my hands.

"I have the honour to be, dear Sir,

"Your very faithful servant,

"ELIOT."

The above shows, we think, pretty clearly, that the minds of the members of the government were by no means set at rest, and that they questioned

very much the wisdom or prudence of the step which they had taken; and it is plain that, but for the determined attitude of the Attorney-General, and the intimation which he gave that his resignation would be the certain result of the refusal of the government to confirm the appointment, it would have been cancelled with but little hesitation.

On his return to office as Attorney-General his services were called into active requisition. In 1842 we find him attending in person to prosecute at the spring assizes at Clonmel and Armagh; while, later in the same year, at the special commission which was issued to Tipperary for the purpose of trying the murderers of Mr. Hall, and other offenders, he filled the post of crown prosecutor; and at the summer assizes conducted at Armagh the prosecution of some important cases of Ribbonism. He continued in the office of Attorney-General about a year; and, upon the death of Sir Michael O'Loghlen, was appointed Master of the Rolls.

It would seem that at the time when, on the resignation of the Lord Chief-Justice (Bushe) Mr. Pennefather was (in accordance with the stipulation made with the Attorney-General) appointed to the vacant seat in the Queen's Bench, the government were anxious if possible to have placed Blackburne

in it, for we find that, when a vacancy subsequently occurred in the Rolls, negotiations were opened with the Chief-Justice to induce him to exchange his post for that of Master of the Rolls, to the failure of which allusion is made by the Lord-Lieutenant in the following letter, placing the latter office at Blackburne's disposal :—

"*Private.*

"*October* 19, 1842.

"MY DEAR SIR,—I received a letter from the Chief-Justice last night. He declines the proposed exchange, and I have therefore, by to-day's post, laid your name before her Majesty for the Mastership of the Rolls, Mr. Smith for Attorney-General, and Sergeant Greene for Solicitor-General. Before you finally assume your new office, I should much like to have a conference with you and Mr. Smith, to talk over some of those cases which have been commenced by you, and must devolve on him. I cannot let you take your new office without again offering you my best thanks for the support and assistance I have received from you ever since my acquaintance with you.

"I remain, my dear Sir,

"Yours most truly,

"DE GREY."

CHAPTER X.

Office of the Master of the Rolls; its laborious character.—Fitness of Blackburne for the post.—Appointed in 1846 Chief-Justice of the Queen's Bench.—His unwillingness to leave the Rolls.—Letter of congratulation from Lord de Grey.—Special Commissions issued for the county of Clare, &c., in 1848.—Blackburne called on to preside at them.—The Irish Confederation.—Sedition of Smith O'Brien, Meagher, and Mitchel.—Alarm through the country.—Trials of O'Brien, Meagher, and Mitchel.—Failure of the prosecutions in the case of the two former.—Conviction of the latter.—Subsequent trials of Smith O'Brien, Meagher, and others at Clonmel for high treason in 1848.—Special commission at Monaghan in 1851 for the trial of Mr. Bateson's murderers.—The Chief-Justice's charge to the grand jury.

THE office of Master of the Rolls at the time when Blackburne was appointed to it was one whose duties were of a laborious and harassing character. The Encumbered Estates Court Act had not been passed, and a large portion of the business of the Rolls consisted of what was termed "Receiver motions," dealing with the rights and liabilities of tenants, and with the many perplexing questions which grew out of them. It was not merely their number and variety which rendered them embarrassing, but the

mind of the judge was kept continually on the stretch; and the utmost vigilance and care were required, not only in the administration of this branch of the business of the court, but in that in which the payment of money was involved.

The place was not merely in itself an arduous one, but also one which required great familiarity with the practice, and a mind capable of dealing with small and intricate details, as well as with the larger and more weighty questions which from time to time arose. It was therefore doubtful whether, under these circumstances, Blackburne would be fitted for the duty of the office. He soon, however, proved himself to be eminently suited for it. His powers of concentration, his aptitude in acquiring facts, and of seeing, as it were at a glance, the points of the case before him, his great knowledge, and his rapidity in disposing of the business of the court, soon placed him in the first rank of equity judges.[1]

[1] As a proof of the estimation in which his judgments were held, not merely in Ireland but in England, we refer to the opinion of the Lord Justice Turner, who, in giving judgment in the case of Hawkins *v.* Gathercole, 6 de Gex. MacNaghten and Gordon's Reports, at p. 25, says "In the former of these cases the late Master of the Rolls in Ireland, Mr. Blackburne, the weight of whose judgments cannot be too highly spoken of, expresses himself thus."

He had not been very long in office when he was called on by the Lord Chancellor to assist him in preparing a code of general orders for the Court of Chancery, which may be said to have been the precursor of the extensive reforms which have since taken place in it. He was also invited to sit with him on one or two occasions when questions involving important principles arose.[1]

He continued Master of the Rolls until January 1846, when he was appointed Chief-Justice of the Queen's Bench, which became vacant by the retirement of Mr. Pennefather. When the place was offered to him he doubted whether he would accept it. That of the Master of the Rolls he had in a manner made his own; and in surrendering it for the place of Chief-Justice of the Queen's Bench he felt that he would again be of necessity involved in cares and responsibilities from which in his position of Master of the Rolls he was comparatively free. He also felt, we believe, that he was under no great obligations to the government, and therefore not called upon to make the sacrifices which in

[1] We may instance the case of Box *v.* Jackson, in Drury's Reports, p. 43, in which the doctrine and authorities applicable to the rights of a married woman over her reversionary interest in personal chattels were reviewed and discussed.

many respects the vacating of his office of Master of the Rolls entailed. He yielded, however, to pressure and solicitation, and became Chief-Justice of the Queen's Bench.

Lord de Grey, who had resigned the Lord Lieutenancy some years previously, conveyed his congratulations by the following:—

"West Park, Silsoe, *January* 19, 1846.

"My dear Chief-Justice,—I hope that the congratulations which are due to the country upon your recent change of office are equally acceptable to yourself, and that an application of your talents to your new post will be as agreeable to yourself as I think it will be beneficial to the public. You will, I am sure, recollect that this is no new feeling on my part, as I was most desirous of effecting the object in the autumn of 1842. . . . . Lady de Grey begs to be most kindly remembered to Mrs. Blackburne and yourself,

"And I remain,

"Yours most truly,

"De Grey."

The condition of Ireland at the time when Blackburne accepted the place of Chief-Justice could not

be said to be in a satisfactory, much less a hopeful condition. It is true that O'Connell's power and influence were on the wane, to which many circumstances contributed—his increasing age and declining health (his death, we may state, took place in the early part of the year 1847), and his failure to attain the object which he had so often and so boastfully stated he would accomplish, all combined to deprive him, to some extent, of the weight and prestige which at one time he unquestionably had.

There were, however, other causes which led to this result. The seeds of disaffection which he had sown brought their fruit. A spirit of insubordination and discontent was roused in the hearts of a large number of his followers, who laughed at the doctrine of "moral force," and boldly preached that of physical resistance to British rule.

This was carefully nurtured and fostered by the aid of publications of great and marked ability, and a wide-spread insurrectionary spirit had consequently shown itself, and as the result, a feeling of insecurity and apprehension. As regards agrarian crime, too, the country was in a most unsatisfactory condition. Blood had been freely shed in many parts of it; and it is not too much to say that, if it had not retrograded, it had not advanced a single

step in obedience to the law, or in feelings of good-will towards England.

Blackburne took his seat as Chief-Justice of the Queen's Bench in Hilary Term, 1846, and the following spring went the Home, which had been his old, circuit. The place of Chief-Justice did not bring with it any repose. For although during the first year in which he sat he was not called upon to take any special part in the administration of the law, the influences to which we have already alluded were steadily at work, and were soon to produce their results; and it would almost seem as if he were destined to be a special agent in administering the law whenever the country was in a critical position, and to come to its assistance when it chiefly needed his services.

The latter end of the year 1847 was marked in parts of the south of Ireland by the commission of crimes of the greatest magnitude; and such was the condition of Limerick, Clare, and Tipperary, that the government deemed it necessary to adopt stringent measures for preserving the tranquillity of the country.

Accordingly, in the beginning of the year 1848, special commissions were issued to those counties, at which the Chief-Justice of the Queen's Bench and

the Chief Baron presided. The commission opened at Limerick on the 4th of January, and did not close its labours until February. The cases which were brought forward by the crown were, in many instances, marked by circumstances of great brutality and atrocity, but it is unnecessary to allude further to them.

There was one case, however (the first of its character which we believe was ever tried in Ireland), which calls for a few words. It was that of Frewen, a respectable farmer, who was indicted as an accessory after the fact, for harbouring a notorious character named Ryan (Puck), at the time charged with the commission of a brutal and cowardly murder, for which he was subsequently tried and executed. Upon Frewen's conviction, the Chief-Justice sentenced him to transportation for life—a fearful punishment, but one which the condition of the country imperatively demanded.

It is a lamentable fact that one of the worst features in the history of crime in Ireland is the impunity with which the offender in many instances escapes, owing not merely to the unwillingness of the peasantry to assist in bringing him to justice, but to the obstacles which they offer in concealing him. There are no doubt different causes to which this may be

attributed. Terrorism, the result of wide-spread intimidation, and the feeling of clanship so common in the country, may have much to do with it; but we fear that the chief reason is the dislike which exists to the law, and the consequent sympathy which is felt towards those who infringe it. Whatever, however, may be the causes, it is certain that, although under different circumstances the punishment would have been disproportioned to the offence, the interests and wellbeing of the community at the time urgently required it.

The discontent and disunion to which we have alluded showed itself unmistakably during the latter part of O'Connell's life by the establishment of a rival association styling itself "The Irish Confederation," which commenced its operations early in the year 1847, and numbered amongst its members Messrs. Smith O'Brien, Thomas Francis Meagher, and others. The object of the confederation was, in a word, revolution—the conversion of Ireland, by force, into an independent kingdom.

In the above-mentioned year no open steps were taken beyond the dissemination of seditious publications; but the uneasy condition of France was of no small use in keeping up the spirits of the members of the society, and the successful issue of the French

revolution in February 1848 at once fanned the spark into flames. Accordingly, in the following month of March, Smith O'Brien, at a meeting convened to address the French nation on their newly-acquired liberty, avowed his real sentiments in a speech, and in the address, of which he declared he was the sole author, and in which the following passage occurs :[1]—

"We, whose nationality was extinguished by the basest acts—we, who daily experience the countless evils which result from that unspeakable loss—we, the inhabitants of Ireland, now claim your sympathy. We have firmly resolved that this ancient kingdom shall once again be free and independent. In imitation of your example, we purpose to exhaust all the resources of constitutional action before we resort to other efforts for redress. Time will unfold our projects, but we hesitate not to tell you, in anticipation of the future, that your friendship may increase their efficiency and accelerate their success."

Meagher was not backward on the same occasion. He boldly expressed his views in the following :[2]—

"If the union will be maintained in spite of the

[1] *Vide* the Report of Mr. Justice Crampton's Charge to the Grand Jury, and the Summings up of the Lord Chief-Justice in the Queen *v.* O'Brien, and the Queen *v.* Meagher, p. 11. Thom, Dublin, 1848.

[2] *Ibid.*, p. 25.

Irish people — if the government of Ireland insists on being a government of dragoons, of bombardiers, of detectives, of light infantry — then, I say— Up with the barricades, and invoke the God of battles!"

At a somewhat later period John Mitchel, the editor of the *United Irishman*, wrote a letter, addressed "To the Protestant Farmers, Labourers, and Artisans of the North of Ireland," from which we take the following:[1]—

"This is the gospel that the heavens and the earth are preaching, and that all hearts are secretly burning to embrace. Give up for ever that old interpretation you put upon the word 'Repeal.' Repeal is no priest movement; it is no sectarian, no money swindle nor 'eighty-two' delusion, nor puffery, nor O'Connellism, nor Mullaghmast 'green-cap' stage-play, nor loud-sounding inanity of any sort, got up for any man's profit or praise. It is the mighty, passionate struggle of a nation hastening to be born into new national life; in the which unspeakable throes all the parts and powers and elements of our Irish existence—our confederations, our Protestant repeal associations, our tenant-right societies, our

[1] *Vide* the Report of the Trial of John Mitchel for Felony, p. 26. Thom, Dublin, 1848.

clubs, cliques, and committees, amidst confusions enough, and the saddest jostling and jumbling—are all inevitably tending, however unconsciously, to one and the same illustrious goal—*not* a local legislature—*not* a return to our 'ancient constitution'—*not* a golden link, or a patchwork parliament, or a College-Green chapel-of-ease to St. Stephen's—but an Irish republic, one and indivisible."

Open rupture with England and revolution were thus preached; and the tactics which had proved so successful in France were tried in Ireland; clubs and confederations were formed, and a resort to arms was to take the place of the peaceful agitation of O'Connell.

Alarm pervaded the country. It was uncertain to what extent the revolutionary spirit had spread amongst the people, and the daily rumours which prevailed gave to the movement greater importance than subsequent events showed that it in reality possessed.

The government could not remain inactive, and accordingly informations were filed by the Attorney-General against Messrs. Smith O'Brien and Meagher for the speeches to which we have alluded, and an indictment was preferred against John Mitchel on

account of his letter to the tenant-farmers, and of a speech which he delivered at Limerick. In the cases of O'Brien and Meagher the crown were unsuccessful in obtaining verdicts, the juries having disagreed ; but Mitchel, having been tried, was found guilty, and sentenced to a period of transportation.

This heavy punishment seems to have had no effect as a warning, for the spirit of sedition became stronger and more determined, and in a month or two afterwards Dublin was proclaimed under the "Crime and Outrage" Act, which step was followed by that of the suspension of the Habeas Corpus Act and by other stringent measures, which eventuated in large rewards being offered by the crown for the apprehension of Smith O'Brien, Meagher, and others, who were shortly after arrested.

A special commission was issued, at which Blackburne was asked by Lord Clarendon, in the following letter, to preside, the Chief-Justice of the Common Pleas (Doherty) and Judge Moore being associated with him as judges:[1]—

[1] Alison, in his History of Europe, falls into two errors. In vol. vii. p. 379 he states that Chief-Justice Doherty presided at the trial of Smith O'Brien, and that Meagher was tried in Dublin by Chief-Justice Blackmore !

"VICEREGAL LODGE, *August* 24, 1848.

"MY DEAR LORD CHIEF-JUSTICE,—I am reluctant to encroach upon your vacation, or to propose to you a renewal of the arduous labour you undertook at the beginning of the year; but I feel at the same time that I should fail in my duty to the public if I did not request you to preside over the special commission that must shortly issue for the trial of Smith O'Brien, and those of his associates who can be made amenable in Tipperary. As high treason is fortunately rare in Ireland, and trials for it may present complications and difficulties, I should deeply regret if on such an occasion the country did not have the benefit of your invaluable services. . . . . I fear that this letter will be very unwelcome, but I am sure you will admit that I could not take upon myself the responsibility of not asking you to render an important service to your country.

"Believe me, my dear lord,

"Truly yours,

"CLARENDON."

The special commission opened in Clonmel in September 1848, and resulted in the conviction

of Smith O'Brien, Meagher, and others for high treason.

The magnitude and gravity of the issues involved, not merely as regarded the prisoners, but the country generally; the high social position of Mr. Smith O'Brien; the unusual and novel character of the charge; the evidence in support of it, with its many dramatic incidents; contributed to invest the trials with a degree of weight and interest which we do not think has ever been surpassed in the criminal history of this country. The cases on the part of the crown were conducted with firmness and moderation, while on behalf of the accused there was brought to bear in their defence consummate ability.

It is hardly necessary to add that the amount of labour and responsibility thrown on the judges was very great. They may, indeed, be said to have been also on their trial. The failure of the prosecution from any cause would have been most disastrous, and the heaviest demands were made upon their patience and forbearance, as well as on their legal skill and learning. In the case of Smith O'Brien, the charge was delivered by the Chief-Justice of the Queen's Bench. It contains a luminous exposition of the law, and with equal clearness deals with

the complicated facts. It is a model of a judicial address; and perhaps the best criticism that we can give is, that it was fully equal to the occasion which called for it. A writ of error was sued out, and the various points which were submitted on behalf of the prisoners having been ruled in favour of the crown by the Court of Queen's Bench, the cases were taken by appeal to the House of Lords, which affirmed the decision of the court below.

The opinion of the judges having been stated by Sir Thomas Wilde, Lord Chief-Justice of the Common Pleas, who passed a high eulogium on the judges in the Court of Queen's Bench in Ireland, Lord Brougham, in concurring with the Lord Chancellor that the judgment of the court below should be affirmed, said:[1]—

"I never in the course of my experience read a more able and satisfactory argument in every respect than that of Chief-Justice Blackburne; and the other learned judges have all in my opinion distinguished themselves by their ability and their learning, and their careful and elaborate consideration of these cases." And Lord Campbell added: "My lords, I cannot abstain from expressing my approbation and admiration of the very able manner in which these questions have been treated by the Lord Chief-Justice

[1] "House of Lords' Cases," vol. ii. p. 496.

of Ireland, and the other learned judges of the court below."

One of the London journals,[1] in commenting upon the special commission, wrote as follows:—"The judges selected for the late special commission in the sister kingdom form no exception to their fellows in England or in Ireland. For more than forty years Chief-Justice Blackburne has been a member of the Irish bar, and never since the time of his call in Trinity Term 1805 has a calmer or clearer intellect engaged in the service of the profession. For nearly thirty years of his life he strove in the first rank, both as a lawyer and an advocate; nor were his attainments in his profession his only recommendation. A gentleman by birth, a scholar in the largest sense of the word, a man of honour, a man of the world, and an accomplished member of society, we know not that member of the English bench who might not well be proud to be compared with one so gifted with every judicial, with every gentlemanly attribute."

The issue of the O'Brien affair is soon told. The

[1] In the memorandum from which the above is taken, the extract is stated to have been made from the *Times*. We have, however, in vain searched for it in the columns of that publication, and have therefore given it as having appeared in "one of the London journals."

capital sentences pronounced on the leaders of the wild and rash raid against the English government were commuted to transportation for life, and Smith O'Brien and his associates were sent to Van Diemen's Land. Meagher escaped to America, where he died.

After having passed some years in exile, a free pardon was granted to O'Brien and the others, who returned to Ireland, where the former lived in complete retirement, and died in the year 1864.

We would now say a few words on Blackburne's characteristics as Chief-Justice. His demeanour on the bench was that of dignity and calmness. Emphatically a listener, he but seldom interrupted counsel, and never did so except for the purpose of obtaining information, or of directing their attention to any points of difficulty which he felt in the case. With juries his power was very great. Without attempting either to direct or control them in the discharge of their proper functions, his great sagacity, and the clearness of the view with which he presented each case for their consideration, made a disagreement, or the finding of a verdict contrary to his opinion, matters of but rare occurrence. The rapidity, too, with which he despatched the business which came before him at Nisi Prius was very

remarkable. We recollect that at one of the after sittings eighteen verdicts were returned on the same day. No doubt there were many of these given in cases of a minor character; but the fact remains that the Nisi Prius lists were fully as large, we believe, as those at present, and that he never called for, nor required, the services of a puisne judge to assist him in disposing of them.

The following shows the estimation in which he and the other members of the Irish bench were held in England, and also the anxiety of Lord Campbell (at the time Lord Chief-Justice of the Queen's Bench) to stand well with his Irish judicial brethren. We are unable to throw any additional light upon the "misrepresentation" to which his letter refers, as we do not find any allusion to it in Blackburne's papers:—

"STRATHEDEN HOUSE, *May* 5, 1851.

"MY DEAR LORD,—I assure you that I was much gratified by your lordship's communication, and I shall be at all times delighted to correspond and to co-operate with you on the subject of legal amendment. . . . . I was much annoyed some time ago by a misrepresentation of what I said about quoting an Irish decision. This was, on a mere point of

practice; and I observed 'that it would be better not to get into a habit of quoting Irish decisions on such points, as we were already overwhelmed by the reports of those in the English courts, and upon such points you probably would not care about ours.' But upon grave points of jurisprudence I have always been desirous that there should be a communion between us. I say most unfeignedly that I respect the decisions of the Irish courts as much as those of the English; and, after the manner in which I have been misrepresented, perhaps I may be excused the liberty of declaring that no judge in my time has sat in a court of common law, either in England or in Ireland, for whom I entertain a more profound respect than for Lord Chief-Justice Blackburne.

"I remain, my dear Lord,

"Yours most faithfully,

"CAMPBELL."

On the following 20th of May he writes:—

"MY DEAR LORD CHIEF-JUSTICE,—Although you have so seldom visited us, we are in the habit of reading your judgments, and I can assure you that

your character for learning, discrimination, impartiality, and firmness, is fully known and appreciated in Westminster Hall. I am glad to hear that I am set right with my brother judges in Ireland, as I shall ever earnestly desire to enjoy their good opinion and goodwill. I have introduced several amendments into the two criminal-law bills which I am now carrying through the House of Lords. You shall have copies of them as soon as they are reprinted, and I shall respectfully attend to any suggestions which you may send me respecting them.

"I remain yours most faithfully,

"CAMPBELL.

"STRATHEDEN HOUSE."

Blackburne, although courteous and affable in the extreme, did not tolerate any infringement on the respect which was due to his position as judge, more especially in matters connected with his functions as head of the court. We recollect the well-merited rebuke which he gave to one of his officers, who, as he was leaving court on his return home, stopped him, and said, "I have been requested to ask your lordship when judgment will be given in the Queen *v.* Reynolds" (a case which had excited some interest,

and about which it was supposed that there existed a difference of opinion between the judges). The Chief-Justice's quick and sharp rejoinder was, "Mr. ——, you may tell the person who desired you to ask the question that you have done so, but that you received no answer."

The circumstances of the country again called for his services. In the latter part of the year 1851 agrarian outrages had taken place in the counties of Monaghan, Louth, and Armagh. The Ribbon conspiracy had spread its poisonous influence through these districts, and its effects were seen in the commission of murder and of other crimes. Mr. Bateson, an elderly gentleman of irreproachable character, and held in great esteem by the lower classes, but who filled the position of land-agent to Lord Templetown, was doomed to death by the Vehmegericht of this secret and cowardly confederacy. In the month of December, as he was returning home about four o'clock in the afternoon, he was attacked by three men at a short distance from the populous town of Castle Blaney, and murdered. The crime was of such an open, daring, and brutal character, that the government decided upon issuing at once a special commission for the trial of the persons who were charged with the felony. Accordingly, Lord

Clarendon, at the time Lord-Lieutenant, wrote to the Chief-Justice the following letter:—

"VICEREGAL LODGE, *January* 6, 1852.

"MY DEAR LORD CHIEF-JUSTICE,—Having heard, with great regret, how much you were suffering, I have refrained from writing to you; but as I hope that you are now rather better, I must express my anxious wish that you should preside at the special commission which I am compelled to issue for the trial of Mr. Bateson's murderers. I had hoped that no such necessity would have arisen again during my stay in Ireland; but it is now our only chance of restoring tranquillity in the north; and I feel sure that on this occasion the government and the public may reckon upon your most valuable assistance. I propose to unite Chief-Justice Monahan with you on the commission.

"Believe me, my dear Lord Chief-Justice,

"Very truly yours,

"CLARENDON."

The judges opened the special commission at Monaghan, on the 27th of January, 1852, and the

Chief-Justice of the Queen's Bench delivered the following charge to the grand jury:[1]—

"MR. FOREMAN, AND GENTLEMEN OF THE GRAND JURY OF THE COUNTY OF MONAGHAN,—You are already apprised that her Majesty, by her special commission, has called upon you, at an unusually early period of the year, to perform the important part which by the law and the constitution devolves upon grand jurors engaged in the administration of the criminal justice of the country. In common with all those who have the peace and tranquillity of your county at heart, I must lament the necessity of having thus to convene you. But of the existence of that necessity, I cannot for a moment entertain a doubt. It is too true that a large proportion of this, and of each of the two adjoining counties, Louth and Armagh, is pervaded by a most mischievous association—that Ribbonism, which is a name under which that association exists, prevails in all its horror and all its terror within that fatal district.

"You are aware that upon this occasion you will not have to dispose of any cases except such as shall be selected by her Majesty's Attorney-General for trial. I am informed that there are a few cases

[1] As reported in *Saunders's Newsletter*.

which may be sent before you, each of which is infected by the character of that disaffection and insubordination which distinguish the body to which I have alluded. But the case which will undoubtedly be sent to you, and the case in all its circumstances of the deepest concern and importance, is that in which two persons will be charged with the murder of the late Mr. Bateson.

"It would not be right for me to go into a detail of the evidence that will be laid before you in support of that charge; but it is necessary that I should advert to a few of the circumstances connected with it, principally with a view of satisfying you of the necessity of being convinced as to the identity of the parties charged with that offence before you find true bills against them.

"Mr. Bateson died on the 5th of December last. He died of wounds, bruises, and fractures inflicted upon him on the preceding day about the hour of half-past four o'clock. His place of residence was at Castle Blaney, and he had gone, being the agent of Lord Templetown, to a farm belonging to that nobleman, upon which the business was carried on as a model farm, for the example and instruction of the estate. This farm was about two miles from Castle Blaney. He remained there about an

hour or two, and when on his way home, less than half a mile from Castle Blaney, three men either met or overtook him. In a very short time a pistol-shot was heard to be discharged,—and I wish that it had taken effect, but it did not.

"Having failed in that manner to assassinate him, the three persons attacked him, and literally smashed his skull in pieces, while there was scarcely a part of his body that did not bear marks of the most merciless and savage barbarity. I said that it would have been a mercy if his life had been extinguished by the pistol shot, for he lingered for several hours in the greatest agony, and at length upon the following day death put a period to his sufferings.

"Gentlemen, I have only stated to you facts about which there cannot be the smallest doubt. The part of the case, and the part of it (if there be any) with respect to which you can entertain any doubt or difficulty, will be the identification of the parties charged. With reference to that I wish to impress upon you this caution, which as grand jurors you must have often heard before, that you ought not to find a bill of indictment against the parties accused upon evidence which would not justify you if you were a petty jury in finding them guilty of the crime imputed to them.

"You have been often told, and I now repeat it, that a bill of indictment found upon insufficient evidence is attended by one or other of these two mischievous effects: if the party charged be really innocent, a great injury will be inflicted upon him by finding a bill of indictment upon imperfect or defective evidence; and if, on the other hand, the evidence be imperfect, and a party who is really guilty be put on his trial, the consequence will be that he will be sure of being acquitted, and the verdict of acquittal will protect him from any future charge or investigation.

"Having now, gentlemen, given you the only directions which I consider necessary, so far as regards the finding of the bills, and the general circumstances of the case, I would advert to the condition of a large part of your county, which appears to impose upon me the duty of calling not only your attention, and that of the magistrates of the county, but also of all connected with the administration of justice, to the state of the law, the execution of which is so imperatively demanded by the condition of this disturbed and distracted locality.

"Whether the murderers of Mr. Bateson were actuated by private and individual motives of

vengeance, or whether they were the official assassins to whom was deputed the execution of the sentence of death pronounced against him by some Ribbon society, it is perhaps not very important to inquire; but this is perfectly true, that these men never would have committed the murder, or attempted to have committed it, at the time and place where it happened, if they had not felt assured that they would have had that protection, support, and connivance which the power of Ribbonism insures to all, no matter how atrocious and revolting the crimes may be.

"No doubt can be entertained but that these associations trust for impunity to the protection which the violators of the peace are sure to derive from the power and influence of such a state of things; for see, gentlemen, the circumstances which took place. On the public highway, in the broad daylight, within a short distance of a populous town, on a road where persons were continually going to and fro on their ordinary business, no man in his senses would have attempted a murder under such circumstances if he did not feel assured that he could commit it with impunity. And unfortunately they had to a certain extent rightly calculated on impunity. For though these cowardly

assassins must have occupied a considerable period of time in effecting their purpose, and though Mr. Bateson must have cried out for help, no hand, no voice, was raised for succour; and the murderous act being done, the murderers walked away, scarcely accelerating their pace, unwatched, unmarked; and it does not appear that when the police came to track their path they received the slightest assistance.

"If there was nothing but this circumstance to evidence the existence, the power, and the intimidation which this lawless body carries with it, the simple statement which I have made would be abundant evidence to satisfy any one of the existence of this formidable body. It is a body which has followed the example, and which has been formed on the model of several others of the same kind, of all of which I am quite safe in saying that they have proved the severest scourge of our land.

"I do verily believe, that if the deadliest enemy of Ireland were set to devise a scheme by which its prosperity, its happiness, and its peace might be effectually marred and destroyed, it would be by the formation and construction of these bodies.

"Not to speak of their immediate palpable and

obvious effects—not to speak of the valuable lives which they sacrifice and the amount of property which is damaged in the course of their operations; of the exile to which the most valuable members of the community are obliged to have recourse for security,—not to speak of the ruin, the misery, the death, the exile, and the penury which the very people bring upon themselves by their own acts (and these are all plain and obvious consequences of which no doubt whatever can exist), the amount of good which they effectually obstruct and prevent is beyond calculation. They interfere with employment; they render abortive any attempt at improving the soil and the condition of the population; and last of all, they repel speculation and capital, so essentially necessary to the development of the great resources which Ireland is known to possess.

"They repel these, and what is the consequence? The very classes who would be immediately benefited by the expenditure of that capital, to whose labours and industry it would give occupation and remuneration, are, by a sort of retributive justice, the very first to suffer most heavily.

"But criminal, highly criminal, as the lower orders of the people engaged in these mischievous associations undoubtedly are, there are others, who, if

their legal responsibility be less obvious, are in my judgment, morally speaking, scarcely less criminal. I mean persons and classes who by their speeches, their publications, and otherwise, applaud, extenuate, justify the commission of crimes, which are not only disgraceful to our nature and to our national character, but repugnant alike to the laws of God and man.

"I have made these observations as introductory to that statement of the law which I intend to lay before you; and on looking into the acts of Parliament, I most certainly infer from them what the opinion of the Legislature was as to the magnitude of the evil, and the necessity of preventing it, if it could be prevented, and of inflicting on those concerned in its commission the most exemplary punishment.

"You all know that the two great means (which are but one in substance) by which the machinery of these Ribbon associations is carried out are the administration of unlawful oaths and engagements, and the formation of illegal assemblies."

(Having then directed the attention of the grand jury in detail to the provisions of the several statutes bearing on the question of illegal oaths and assemblies, the Chief-Justice continued as follows:—)

"Gentlemen, the view which I have hitherto taken of the disturbed state of this country is certainly most unpromising—I will say gloomy—but I would not, therefore, have you despond. This is but one of a series of conspiracies which successively and in different parts of the country have affected and disturbed for a time its peace and tranquillity. All those that have preceded it have been encountered and subdued by the power of the law. Such must be its fate also. It is vain to say that in this struggle lawless violence and tyranny must prevail against the power of the state.

"As sure as we live, this conspiracy must follow the fate of its predecessors. The law will not succumb. It will assert its supremacy in the end; and if, as it now stands, it will not be powerful enough to insure a victory, the duty of those who govern us will be to interpose further powers for our protection and defence. The debt of protection is due to the subject, and fear not that that debt of protection will be paid.

"Let me in this part of the case read the language of one of the ablest men that Ireland ever produced—language in which are combined the testimony of a witness to the past and the profound and acute knowledge of human nature which

that great man possessed—I allude to Lord Plunket, and these are his words: 'Time after time have secret associations been formed. During the last twenty-five years they have become more alarming and more dangerous, but one undeviating fact has attended all—the ruin and destruction of the promoters and abettors.'

"But there is another, and, if possible, a surer ground of hope and confidence than even the history of the past affords. It is a source of consolation derived from that in which the power of these wicked associations is supposed principally to consist, viz., that the obligation of an oath is the bond of their secrecy. It is the bond of their mutual adhesion and consent for the commission of crime. What is such an oath? It is in my judgment the most audacious insult which a man can offer to his Maker. It is an invocation to the Supreme Being to help in the violation of His own immutable laws. How can an obligation so witnessed and so recorded last? It can only be until the resistless instinct of self-preservation demands its breach.

"The tide will turn; the hour of adverse vicissitude must sooner or later arise, and however odious and execrable the name of informer may

be, there will be a competition for that office, and the foremost in the race will be those by whose wickedness and artifices others have been seduced and misled,—the first to betray will be the person who has first deluded. The person who is the first to betray will undoubtedly prefer the safety of his own life and liberty to that of his associates in crime.

"Hear, again, the language of the great man to whom I just now referred: 'It is the nature of vice, and a part of the dispensation of Providence, that associates in guilt cannot safely confide in each other. Each sees his own crime reflected in the countenances of his partners, and feels in the prospect the apprehension of his own guilt.'

"Now, in suggesting to you that these oaths have no binding efficacy—that they are criminal as regards the law and sinful as regards the Almighty, and that therefore any compact or pledge founded upon such a basis must ultimately prove abortive, and lead to the destruction of the parties themselves—I wish you to bear in mind, that all this is evidenced by the history of the past. For at various times, even within my own limited experience, have I seen a companion in guilt become a witness for the crown, and intrepidly give evidence against and bring to justice those who

had fatally confided to him their liberties and their lives.

"What has been, will be; and without venturing tc predict—I use no such word—I will venture confidently to anticipate that, before this tragedy is brought to a close, those who have been deluded, will find that they have been betrayed, and that the persons who have led them into mischief are the persons who will make them amenable to justice."

We offer no apology to our readers for giving nearly *in extenso* the above charge of the Chief-Justice. Excellent though it be in style and diction, we think that it has claims of a higher character, and may fairly be said to possess historic interest. No doubt the Special Commission was unsuccessful, so far as its immediate object was concerned—viz., the securing the conviction of the murderers of Mr. Bateson. Two men were arraigned for the murder. One only was put on his trial; but, after two abortive attempts to obtain a conviction, and after merely disposing of one or two other cases of a minor character, the Commission was adjourned.

The charge of the Chief-Justice was, however, we believe, not without good results. The solemn note of warning which it sounded to the peasantry,

and its denunciation of the inciters and fomenters of crime, helped in no small degree to break up and destroy the Ribbon confederacy; the counties of Monaghan, Armagh, and Louth, to which the Chief-Justice alluded, having since become orderly, peaceable, and free from agrarian outrage or disturbance.

CHAPTER XI.

Advent of Lord Derby to power in 1852.—His invitation to Blackburne to take the Great Seal.—The latter's acceptance of it.—Lord Eglinton appointed Lord-Lieutenant.—His great success and popularity.—Gratification felt at Blackburne's elevation.—His judicial career as Chancellor.—Short duration of the ministry.—Formation of a Coalition Government under Lord Aberdeen.—Anticipation that in some of the offices there would be no change.—Article in the *Times* on the subject.—Blackburne's resignation of the Great Seal and its acceptance.—Great regret at his retirement.—Correspondence in the *Morning Herald* and *Sun* newspapers. Letter of Lord Derby in reply to that of Blackburne tendering his resignation.—The National Board of Education.—Blackburne appointed one of the Commissioners.—His retirement from it.—His reasons for doing so.

SHORTLY after the termination of the Special Commission at Monaghan, Blackburne resigned his seat in the Queen's Bench, and exchanged his place of Chief-Justice for the higher but precarious one of Lord Chancellor. It would be foreign to our present purpose to go into a history of the political situation of the country from 1846, when Sir Robert

Peel resigned, down to the period of which we are writing; nor have we any wish to do so, for, as regards the great Conservative party, the retrospect would be but painful.

Suffice it to say, that when Lord John Russell, who then succeeded to power, and who retained a weak hold of it for five years, found himself at last unable to carry on the government, Lord Derby (who in the year 1851 had declined to undertake the task), upon the resignation of Lord John Russell in the following year no longer hesitated, but, under the circumstances in which the country was placed, at once proceeded to form a government.

He felt, as we believe every minister has done, that the great difficulty which he would have to encounter was Ireland. As Chief Secretary, he had had to deal with her affairs during one of the most troublesome and stormy periods of her history; and his experience had taught him, no less than his own great sagacity, that the only way in which it could be governed would be by placing at the head of its affairs men whose names and characters would be of themselves guarantees that the laws would be firmly and impartially administered, and life and property jealously protected.

It was, we think, with these views that he selected as his Lord-Lieutenant the Earl of Eglinton, and Blackburne as his Lord Chancellor. The following is Lord Derby's communication on the subject:—

"*Private.*

"St. JAMES'S SQUARE, *February* 23, 1852.

"MY DEAR LORD,—I have only this day accepted the arduous duties of First Lord of the Treasury, and almost my first act is one which gives me particular pleasure, because it enables me at the same time to evince my regard for an old friend, and to do a service to Ireland, by offering to its highest legal authority the office of Lord Chancellor of Ireland. I hope to receive your acceptance as early as may consist with your own convenience; and if, when the business of the assizes is over, you could spare time to come over here for a short time, I should be glad of the opportunity of some conversation with you in reference to the Irish Bar and the general state of affairs in that country. I ought to add, that the Queen highly approves of your appointment. Napier and Whiteside are to be our Attorney and Solicitor Generals, and I

believe Lord Eglinton will be the new Lord-Lieutenant.

"I am, my dear Lord,

"Yours very sincerely,

"DERBY."

Gratifying as the above letter unquestionably was, not merely from the great position and character of the writer, but from the warm sentiments of confidence and esteem which it contained, the circumstances under which Lord Derby had accepted office made it doubtful whether Blackburne would be willing to exchange a certainty for an uncertainty, and to incur the risk of retirement into private life, deprived of that occupation which had become to him so essential.

The political horizon was by no means cloudless. True it was that Lord Derby had had little or no share in bringing about the crisis which had made him Premier; but it by no means followed that he would be permitted unchallenged to govern the country in the face of a hostile majority in the House of Commons, which must have felt not a little exasperated at the turn which affairs had taken. No doubt divisions existed in the ranks

of that majority, but all viewed Lord Derby in the light of a common foe, and it was pretty certain that, when the opportunity presented itself, they would unite for the purpose of driving the new administration from office. The "Irish Brass Band," as it was styled, had in itself no small power, and was "open to conviction." Indeed, the private meeting at Lord John Russell's house in Chesham Place, in the following month of March, was styled by Lord Derby as an attempt at another "*Litchfield House Compact.*"

Such being the political situation, it could not be a matter of surprise had Blackburne declined the office of Lord Chancellor, high though the position was. He did not, however, hesitate. True to the interests of the Conservative party, he decided on standing firmly by it, and at once accepted the post.

The illustrious nobleman selected by Lord Derby for the office of Lord-Lieutenant of Ireland was a man of no ordinary character. Of large and princely liberality, his name was familiar to the public by its connection with the splendid mediæval pageant —the "Eglinton Tournament." Having, however, we believe, previously to the time of which we are writing, taken but little part in politics or in

public affairs, he came to Ireland a new and untried man, and there were not wanting, therefore, those amongst the Whig party who indulged in what Shiel termed "lugubrious vaticinations" when it was announced that Lord Eglinton was to be the successor of Lord Clarendon; while some among the Conservative party shook their heads in anticipation of his failure, and spoke doubtingly of his future.

The prognostications on the one hand, and the apprehensions on the other, were each in turn soon falsified and dispelled. Lord Eglinton showed that he was eminently fitted for the post. Of clear intellect, of sound and discriminating judgment, of frank and conciliating manner and address, open-hearted and generous in the largest sense of the word, he thoroughly identified himself with the truest and best interests of the country, and fairly won its affections.

It must, therefore, always be matter of deep regret that the opportunities which were afforded to him of doing it a service were of so brief and evanescent a character, and that the hand of death should have taken him off in the midst of his career of usefulness, and deprived Ireland of one of its best and most true-hearted friends—one

whose name will always be enrolled amongst the number of the worthies who have devoted their energies to its welfare.

In a letter addressed to Blackburne shortly after Lord Eglinton had left Ireland in 1853, he writes :—

"I cannot sufficiently strongly express to you my sense of the kindness of the farewell we received the other day; and though it was a sorrowful occasion, I shall always look back to it with feelings of pride and gratification. However much my own tastes and habits lead me to prefer a private life, I cannot but regret leaving the many friends I have gained in Ireland, and being cut short in a policy which I am vain enough to think would have benefited poor Ireland."

We have thus faintly, and we would add, very imperfectly, sketched the character of the nobleman who was selected by Lord Derby to undertake the arduous and troublesome position of Viceroy, and under whom Blackburne was asked to serve. In this respect his lot could not have been more happily cast. From (we may say) the first hour of their intercourse the greatest confidence and friendship subsisted between them, which death alone terminated.

The following extract from a letter written by Lord Eglinton shortly before his departure from

Ireland shows what the feelings and sentiments were which he personally entertained for him:—

"VICEREGAL LODGE, *January* 3, 1853.

"As I am now writing in all probability the last letter which will pass between us in our respective official capacities, I cannot resist expressing to you, however feebly and inadequately, my gratitude to you for the kindness you have shown me, and the assistance you have at all times been ready to give me, and my sense of the incomparable manner in which you have conducted the duties of your arduous office. Praise from one so inexperienced in public life as myself, and so inferior in talent and information, is almost a mockery; but I will, nevertheless, venture to assert that in my experience of men, either in a public or private capacity, I have never met one of whom I have formed a higher opinion, on whose honour and judgment I would more implicitly rely, or whose approbation and friendship I have been more anxious to retain. You will, I am sure, excuse this overflow from my heart at a time when the connection between us is about to be severed.

"Ever sincerely yours,

"EGLINTON AND WINTON."

We cannot leave the subject of the late Lord Eglinton without making one observation. His great popularity has now become matter of history, and is an undeniable fact, but there were many who, in disparagement, ascribed it to his having had so wise and sagacious a man as Blackburne as his counsellor. To some extent this, perhaps, was true, but we should be doing an injustice to the memory of both if we did not state that we have ourselves often heard Blackburne express the great admiration which he felt for the administrative skill and the sound and discriminating judgment which were such distinguishing features in Lord Eglinton, and which in no small degree contributed to his marked success.

Great gratification was felt when it became known that Blackburne had been appointed Lord Chancellor. The bar hailed it as an event of no small importance, inasmuch as by his elevation to be the head of the judicial bench professional character and status had been recognized, and a guarantee thus given that in its other legal appointments the maxim "*detur digniori*" would be observed by the government. The genial and sociable nature of Blackburne, as well as his great and upright character, made him loved and respected by the public

generally; and the "Antient Concert Society," of which he was one of the oldest members, and at the time president, to mark their appreciation of his elevation, invited him to a public dinner, at which the late Lord Gough presided.

Blackburne's career as Chancellor, although destined to be of but short duration, equalled, if not excelled, that in his two former judicial positions. In the discharge of his duties as an equity judge he brought to bear the same powers of concentration, legal knowledge, and acumen; and the rapidity and ease with which he disposed of the business of the court were matters of equal admiration. When he took his seat in the Court of Chancery (which he did on the first day of Easter term), a large number of causes had from various circumstances remained unheard, but before the following month of July not merely the arrear, but also all the ordinary business of the court had been disposed of by him, containing in it, too, cases of great magnitude and importance.[1]

[1] We may instance the case of Kelly *v.* Thewles, reported in the 2nd vol. of the "Irish Chancery Reports," p. 510, which was a suit instituted for the purpose of obtaining a commission of review, and in which the important question of undue influence in procuring the execution of a will arose. The Chancellor's judgment contains a masterly exposition of the law, and may be deemed to be a leading authority on the subject.

Parliament was prorogued in the month of July, and was shortly afterwards dissolved. Its successor met in November, and in December Mr. Disraeli introduced his Budget. Upon its rejection, the ministry resigned—considering that the adverse decision of the House of Commons amounted to a vote of want of confidence.

A coalition government was thereupon formed with Lord Aberdeen as its head; and as many members of the new administration, including the Premier himself, had held office under Sir Robert Peel, and as therefore the conservative element (if it did not preponderate) formed a strong feature in the new government, it was generally anticipated that with respect to some of the offices no change would be made in their occupants.

The *Times*, which was the organ of the incoming administration and enjoyed its confidence, contained the following:[1]—"On one or two points, not strictly involving political considerations, there can be no doubt. It is indispensable that Lord Hardinge and Lord Raglan should retain their respective positions as Commander-in-Chief and Master-General of the Ordnance, for no men can more deserve the confi-

[1] *Vide* a leading article in the *Times* of December 21, 1852, on the rumoured changes.

dence of any government in the military offices which they fill; nor is it less desirable that the great legal offices of the Lord Chancellor and the Lord Chancellor of Ireland should if possible remain undisturbed in the hands of their present possessors, whose services and ability as the first legal officers of the crown it is impossible to overrate, and would be most difficult to replace."

The words "if possible" in the above article, plainly admit of a two-fold interpretation, and point either to a refusal on the part of the holders of their respective offices to continue in them, or to the circumstance of political necessity and intrigue becoming a bar, and thus preventing the government from carrying out their wishes on the subject. In the case of Blackburne the event has shown that the latter view is correct. The expectations of the public were not fulfilled: he sent in his resignation, which was accepted, and Mr. Brady, his predecessor in office, reappointed. We deem it right, however, to add that we believe that it was very doubtful whether, had he been asked to do so, he would have continued in office; and that patriotic feeling alone, and a sense of what he owed to the public and the country, would have induced him to retain it.

Great and general regret was felt at his retirement.

Short though the period was during which he had held the great seal, he had left his stamp on the office not merely as a consummate lawyer, but as a statesman of masterly vigour and sagacity. A correspondent of the *Morning Herald*, signing himself "Veritas," wrote as follows:—"As a moderate Conservative and an admirer of the late Sir Robert Peel, I had hoped, up to a very recent period, that Conservatism (I use the word in the sense in which it is generally understood) would be the policy of a cabinet composed in great part of his immediate followers, and presided over by a statesman his contemporary and friend. That hope is now, I confess, completely dispelled; and certain I am that the cause which has dispelled it will create distrust (I had almost said *disgust*) of her Majesty's present advisers in the minds of many thousand Irishmen who might otherwise have been disposed to view them without disfavour.

"The cause to which I allude is the removal of the great seal of Ireland from the custody of the late Lord Chancellor Blackburne. It is impossible perhaps to convey to an English mind an idea of the sorrow or rather of the gloom which to my knowledge this untoward event has created in Ireland; it is not merely that the bench has lost

its brightest ornament, the bar its pride, the magistracy its counsellor, and the country its support—but the humblest Roman Catholic peasants through the land feel, know, and *say* that they have lost their *friend.* And who, indeed, can be more truly the friend of all men, than he who dispenses justice to all with a swift, an even, an unerring hand?

"The late Lord Chancellor needs no eulogium even from the press; his praises form part of the history of the country. As Lord Chief-Justice of the Queen's Bench—over which court he presided in times of great difficulty and danger to the realm—he was pronounced by Lord Campbell, in his place in the House of Peers, to be one of the greatest judges that ever adorned the annals of this empire; and it is not too much to say that he will go down to posterity no less conspicuous as an equity judge.

"Equal in learning to his splendid contemporary in this country, and of still larger experience in the law, he exhibited a union of the rarest and most precious qualities — profound knowledge, maturest judgment, singular courtesy, unaffected dignity, unwearied patience, marvellous despatch. As an example of this latter attribute it is sufficient to state that, having succeeded to an enormous arrear

of business, bequeathed to him by his predecessor, now his successor, he, like Lord St. Leonards, has not left a single cause undisposed of, although his own lists were unusually heavy. The removal of such a man—and at a time when reform in the law is loudly called for—is little less than a national calamity, demanding for its justification the very gravest state necessities."

Another correspondent, styling himself "Aequitas," thus wrote to the *Sun* newspaper:—"The just solicitude apparent in your columns to render honour to whom honour is due, assures me that you will admit within them some expressions of regret from a member of the bar of Ireland on the loss to that country of the highest ornament of the bench of the United Kingdom, Lord Chancellor Blackburne having sent in his resignation during the Christmas recess. The bar were prevented from presenting him with an address, a ceremony which etiquette requires to take place in court. Had it not been for this untoward circumstance that body would, as one man, have come forward to record their admiration of his judicial career,—a career of which history knows no compeer. In the three most exalted tribunals of Ireland he has presided with equal honour, and in all stands unsurpassed. Who as

Master of the Rolls has discharged the arduous duties of that office with the same ability, rapidity, and energy? Who, again, as Chief-Justice of Ireland ever approached him in reputation? I forget not the classical, eloquent, and impartial Bushe, but yet I fearlessly aver that never was that station filled by a lawyer so able—never was the balance of justice held by a hand so steady—as that of Francis Blackburne. The wisdom and beauty of his charges at assizes, on special commissions, and at state trials, have established for him an enduring fame. It was his lot to preside in chief over the criminal courts at a period when rebellion and murder stalked abroad. Nobly he acquitted himself, and well the Irish government of that day knew the fact."

The writer (having alluded to the fact of Blackburne having become Lord Chancellor, and to the rapidity with which he disposed of the arrears and business of the court) proceeded as follows:—"Distinguished men have held the great seal of Ireland: we recollect with admiration the learning of Lord Redesdale, the colossal eloquence and talents of Lord Plunket, the knowledge and acuteness of Sir Edward Sugden, but not one even of those men was so perfectly adapted for the woolsack as

Mr. Blackburne. He seemed to have been created for the place. Extraordinary sagacity and power of mental concentration, unrivalled experience, and profound acquaintance with every branch of law and equity; immovable temper and pre-eminent dignity of manner, a style nervous, terse and perspicuous, at times highly adorned, a distinct and charmingly melodious voice, a fluent delivery, courtesy almost chivalrous, inexhaustible information, and a marvellous facility in the disposal of business, formed the rare combination of qualities which proclaimed his fitness for the prætorship. Before him justice was always aided in her struggle with technicality. The innocent prisoner hailed him as his judge; the guilty man knew that his fate was sealed.

"Every lover of Ireland must deplore that such an intellect should in its zenith be allowed to lie fallow. Remonstrance is now too late, but might not such a judge, a statesman so moderate, the Attorney-General of Lord Grey and Sir Robert Peel, have been preserved for his country's sake? The attempt, though perhaps unsuccessful, would at least have reflected honour on the new ministry, and gratified the nation. Would that of him we could say, as Chancellor, '*Sedet æternumque*

sedebit.' Respected by the judges and adored by the bar, he retires after forty-eight years of uninterrupted public activity into private life, where he is as much beloved by his friends as he is popular with his fellow-countrymen."

Whatever differences of opinion may exist with respect to the merits or demerits of the Derby administration of 1852, or as to the fairness of the means taken to obtain its overthrow, the letters which we have here quoted are, we believe, just and fair exponents of the state of public opinion in Ireland, and of the feeling which was entertained that, by the removal of Blackburne and (we may add) Lord Eglinton from the conduct of affairs, the country had sustained a heavy loss, and one not likely to be compensated by the (so-styled) benefit and advantages of the change of government.

We close this part of our subject with the letter which Blackburne received from Lord Derby in reply to that in which he tendered his resignation :—

"St. JAMES'S SQUARE, *December* 21, 1852.

"MY DEAR LORD CHANCELLOR,—I have this moment received your letter of yesterday, together with one from the Lord-Lieutenant tendering your and his resignations of your respective offices. At the

proper time I will not fail to submit them to the Queen, and I will at the same time submit to her Majesty your most loyal and dutiful message. I apprehend, however, that I ought to take no step of this kind until Lord Aberdeen shall have so far matured his arrangements as to be confident of his ability to form an administration, which though probable is not yet certain. I cannot receive your resignation without offering you my thanks for the very able manner in which you have justified the confidence which I felt in offering to you the Irish seals, and for the effective aid you have afforded to the Queen's government in Ireland; and one of the few subjects of regret which I feel in quitting office is that as a necessary consequence England loses the services of Lord St. Leonards, and Ireland those, hardly less distinguished, of Lord Chancellor Blackburne.

"Believe me, dear Lord Chancellor,

"Yours very sincerely,

"DERBY."

In 1852, by the wish of government, and at the request of Lord Eglinton, he became one of the commissioners of national education. His connection with the board was, however, of but short duration,

as he, in conjunction with the late Archbishop of Dublin (Whately) and Baron Greene, retired from it in the following year.

In 1854 Blackburne was examined at great length before a committee of the House of Lords as to the circumstances which led to his retirement and that of the other commissioners. He has embodied, in the following minute, the reasons for having done so, which we give without further preface :—

"The Board of National Education in Ireland has for many years sanctioned the use of three works of a religious character. They are specified in its eighth rule, which states 'that the commissioners do not insist on "The Scripture Lessons," "Lessons on the Truth of Christianity," or book of "Sacred Poetry," being read in any of the national schools; nor do they allow them to be read during the time of secular or literary instruction in any school attended by children whose parents or guardians object to their being so read. In such case the commissioners prohibit the use of them except at the times of religious instruction, when the persons giving it may use these books or not as they think proper.'"

"These books were all published by the commissioners for the purpose of joint religious or moral

and literary instruction in all the national schools, subject to the above qualification. There were other works not published but sanctioned by the board (lists of both descriptions are annexed to the annual reports). In the list of books not published but sanctioned by the National Board, is a work entiled 'Easy Lessons on Christian Evidences,' published by Parker, Strand. This, as well as the 'Lessons on the Truth of Christianity,' is the work of the Archbishop of Dublin. In the preface to it, it is stated that another edition of this tract, somewhat altered, has been published by the National Education Board, under the title of 'Lessons on the Truth of Christianity.'

"The two tracts differ in a few places as to the arrangement of the arguments and the form of expression, but not in anything essential. Some persons prefer the one and some the other edition. The board permits the use of either in the national schools, according to the choice of the managers. Neither of them contains any matter of controversy among Christians.

"It is very plain that all these works contain matter of religious instruction, and that, subject to the eighth rule, such instruction was meant to be given to children of all persuasions, com-

bined with and as part of the literary and secular instruction in the national schools. They therefore became an essential part of the system of education—were annually brought under the cognizance of the government, were the basis of the annual parliamentary grants, and were accepted and acted on by a vast number of persons who, conscientiously believing that religion should form the basis of education, treated them as the ground of their adhesion and support.

"In addition to the length of time that these books have been published, sanctioned, and used, we must remember the great authority and title to public confidence which they derive from the talents, piety, sagacity, and zeal of the members who constituted the body from which they emanated. Can it be said that, after the acts of the present board, by which both editions of the work of Archbishop Whately will be expunged, the system of education so long established will remain unchanged? On the contrary, will it not be essentially altered in the very respect which removed the scruples and conciliated the support of the great body of its Protestant adherents and advocates?

"But I must examine more in detail the later acts of the board. By one resolution, a majority of ten to one

expunged Parker's edition of the archbishop's work from the list of the books sanctioned; by the other, the edition published and sanctioned by the board was expunged, and by a very large majority.

"In the course of the discussions on the subject, it was alleged that there was an essential difference between these two editions. On this point it can now be of no use to observe, because both editions will be expunged; but I may remark that if a substantial difference exists, it is singular that it was not discovered until the year 1853; and I must decline to bow to the authority of those who allege that they have made the discovery, and feel myself bound to give implicit credit to the assertion of the archbishop, that the two tracts do not differ in any essential particular.

"I must now advert to another act of the board, which followed that of expunging these books. It is the decision by which Baron Greene's motion was negatived. To explain this, it is necessary to refer to the eighth rule, and to the different effects ascribed to it. By Baron Greene, the archbishop, and myself, the meaning and object of that rule are considered to have been to excuse or except the child on whose behalf an objection should have been made from reading or being

taught any of the three books objected to; on the other hand, the effect ascribed to the *veto* was contended to be, that it excluded the use of the book or books from the course of combined secular instruction, which should not be taught or read as a part of that course, even by the children whose parents and guardians did not concur in the objection, and, on the contrary, were willing and desirous that their children should be instructed in them.

"This, I am willing to admit, is the import of the eighth rule. But the objections to it, if it is so to operate, are in my mind irresistible. The object contemplated neither justifies nor requires it. That object plainly was, to arm the parent or guardian with the power of protecting the child under his tutelage, but not to enable him to frustrate one of the most important objects of the whole system—that of combining religious with secular instruction by means of those works, which carefully avoided any allusion to matters of controversy and difference between persons of different religious faith. The board would have stultified itself if it had placed in the hands of any one individual a power leading to such a mischievous result as the discredit and defect of its own deliberate measure and purpose.

"What, then, was Baron Greene's motion? It was in substance this, to give and secure full effect to the *veto*, but at the same time to confine its operation to its legitimate object—the exception of the child, not the exclusion of the book. It gave effect to the real meaning and spirit of the eighth rule, by providing that, when an objection was made, a time before or after the period of general secular instruction should be appointed for the teaching or reading of the book or books by those children on whose behalf no objection should be made.

"This resolution was, however, negatived, and the literal construction of the rule thereby affirmed, so that there no longer exists any security or guarantee for the use of any one of these books. Let me ask, can there be imagined a more radical change of the system than the creation or acknowledgment of such a power? But it is said, 'The rule is plain; there is no new power; it is those who support Baron Greene's motion who seek to innovate.' Is this so? Has this alleged power ever been exercised? No. Nay, more; when required to expound the eighth rule, the board repudiated the intention imputed of creating a power totally subversive of their own.

"It appears that in 1840 a complaint was made by

Mr. Tottenham that an inspector had, in consequence of an objection to the use of two of the books, directed them not to be used during the hours of secular instruction. To the letter of Mr. Tottenham a reply was given in the following words :—

"'SIR,—We have laid before the commissioners of education your letter of the 27th ultimo respecting the use of the "Scripture Extracts" and "Sacred Poetry" in the national schools. In reply we are directed to state that the commissioners do not insist upon having them read by any children whose parents, or guardians object to them, nor can they sanction any compulsion for the purpose. But the patrons of the school who think proper may have them read on the opening, or immediately before the closing of the school, provided no children shall be required then to attend against the will of their parents or guardians.'

"The draft of this letter is in the handwriting of the late Mr. Blake: he, Mr. Corballis, and the Archbishop of Dublin composed the board when it was agreed on. There is a similar act of the board in the year 1843. Thus the authoritative construction, the acts of the board, and its whole practice, are at

variance with the literal construction of the eighth rule, which has now been affirmed by the rejection of Baron Greene's most reasonable proposition. The consequence is that there is an end of all security that any portion of the religious instruction contained in any of these books will for the future be imparted.

"Regarding the position in which the different acts of the board have placed the most essential of all the established branches of its system, I cannot say that I have any confidence that a single vestige of religious instruction will be permitted to be retained. True it is, that only one of the three religious works so long and deliberately sanctioned is repudiated. But the same persons who have done this may, when and if they please, reject the others—nay, the commissioners do this in effect when they arm any one man who is the parent of a child attending any school with the arbitrary power to exclude them. They thereby delegate to him the same power which they themselves have now exercised—a power in my mind incompatible with their own rights and duties, and the integrity of the system of national education as heretofore established.

"How far it was competent for the board to

effect such a change of system as is done by these acts I do not mean to inquire. But it is compatible with the sincere respect which I entertain for those from whom I have differed to say that, having regard to the degree of public confidence (the growth of so many years) which the board had acquired—having regard to the support, and the grounds of support, received from successive governments and the legislature—to the station, integrity and character of the distinguished founders of the system, and (to speak of others as of myself) the persons who became connected with and bound to maintain the institution as it existed, it is a serious question whether it was just or fair to abandon one of its substantial as well as most obvious claims to this confidence and support, and further to do so not to obviate any inconvenience or to redress any cause of complaint, but on the ground that all that we and our predecessors have done was wrong—that the rejected book ought never to have been sanctioned or admitted.

"It is to be observed that the opinions of the board have not yet been passed or recorded as formal acts, and also that four of the commissioners were absent when those opinions were

delivered. The absent commissioners were the Archbishop of Dublin, the Marquis of Kildare, Lord Bellew, and Baron Greene."

Although we do not propose to enter into a discussion of the merits of the *vexata questio* of the eighth rule, yet inasmuch as its abandonment by the Board of National Education resulted in the retirement of three of its most valuable members and supporters, it may not be uninteresting to our readers shortly to narrate the circumstances under which the rule was adopted and the probable causes which led to its subsequent rejection.

In the Report of the Select Committee of the House of Lords, appointed in 1854 to inquire into the practical working of the system of national education in Ireland, Blackburne, in reply to the query "whether he had made himself aware of the manner in which the religious element was introduced, and the proceedings with regard to it from the commencement," referred to the petition presented to the House of Lords by certain patrons and managers of national schools, in which it was stated, "that in the first draft of Mr. Stanley (the Secretary for Ireland) the plan projected by

the government was described as one of 'combined literary and separate religious education,' each department altogether to exclude the other; but when that was submitted by Mr. Stanley to the intended commissioners (considered respectively as fair representatives of such communions) it appeared that some of them, before they accepted the office, objected to administer a system which was designed to exclude all religious teaching from combined education.

"That accordingly, after mature deliberation between Mr. Stanley and the several members of the board, as to the possibility of introducing into the united education such scriptural teaching as might involve no controversy amongst Christians, the first draft of the letter was altered, with the full consent of the government and the commissioners, by describing the system to be established as one for combined moral and literary or separate religious instruction, and by adding to that description the following proviso, that is to say, 'It is not designed to exclude from the list of books for the combined instruction such portions of sacred history or of religious or moral teaching as may be approved of by the board.'" Blackburne then added, "In pursuance of that clause, he apprehended that the three books

of a strictly religious character were compiled, introduced, and used in the schools."[1]

It appeared that with respect to two of the works which, in accordance with the original plan and design, were placed upon the list of schoolbooks of the National Board, the "Scripture Lessons" were prepared by the Roman Catholic Archbishop Murray, with the assistance of the other commissioners,[2] while the same prelate "warmly welcomed"[3] the introduction of the book on the "Evidences of Christianity," and having afterwards "looked it over sheet by sheet," gave it his full approbation.

The construction and interpretation put upon the eighth rule was no doubt cavilled at by those who were opposed to the plan of united religious education, but no decided attempt appears to have been made to overturn it until 1852, in which year Archbishop Murray died; and upon his death Doctor (now Cardinal) Cullen, the then Roman Catholic Archbishop of Armagh, was translated to the see of Dublin.

Avowedly hostile to combined religious instruc-

[1] Report of the Select Committee of the House of Lords, appointed to inquire into the practical working of the system of National Education in Ireland (1854), p. 113.

[2] *Ibid.*, p. 140. [3] *Ibid.*, p. 158–178.

tion[1] he lost no time in declaring his opposition to the interpretation put by the board on the "eighth rule," and by pastoral as well as by a letter addressed to the Lord-Lieutenant, vigorously objected to it. It is not our intention to enter into any detail of the various proceedings of the board to which the expression of opinion on the part of Archbishop Cullen gave rise; it is sufficient for our present purpose to state that they ended by the suppression of the obnoxious rule, which was followed (as we have seen) by the retirement of three of the members of the board.

A wide-spread feeling of disappointment and dissatisfaction was entertained by the supporters of national education in Ireland at the revolution in the system caused by the action of the majority of the members of the board, and the committee of the House of Lords appointed to inquire into its working endeavoured to ascertain the cause which led to so great and vital a change.

Accordingly Archbishop Whately was asked[2] "whether he had any means of knowing or forming an opinion whether the Roman Catholic mem-

[1] Report of the Select Committee of the House of Lords, &c., p. 146.

[2] *Ibid.*, p. 157.

bers of the board who insisted on the meaning to which he objected were acting on their own spontaneous judgment, or under any other influence?" to which he replied "that he had no means of knowing in the proper sense of the word; but there were circumstances which seemed to indicate that they were acting under the suggestion of the Roman Catholic archbishop, because their final decision took place subsequently to the public printed denunciation of the particular book which was struck off."

We shall here leave the subject. We think that we have stated enough to show where the probabilities lie as to the source from which the Roman Catholic majority of the board derived their instructions, and shall conclude by giving in his own words the reasons which led Blackburne to retire from it. "He joined it under the conviction that it would afford a large and valuable amount of religious combined with secular instruction. It was his reason for joining the board, as it was his justification with many who required a reason for his doing so. But having done so, when there was subtracted from that course of religious instruction a most substantial and valuable part, he considered that faith had been broken with him, and that he ought no

longer either with consistency or having regard to his own character to remain a member of the board."[1]

Blackburne's retirement into private life was the necessary result of his resignation of the great seal. There was one particular alone in which this was felt by him to be a matter of regret, viz., the sudden relinquishment of active employment after forty-seven years of incessant and energetic toil. Others similarly circumstanced would have felt this to have been a relief, but with him the case was different: the want of his accustomed employment was to him a great deprivation.

In England a retired Lord Chancellor is placed in a much better position. A peer of the realm as Speaker of the House of Lords, the link which ties him to active life is not rudely or suddenly severed; he may if he pleases take part in its deliberations, or act as a member of its appellate tribunal.[2] In Ireland, however, the case is very different; for, with one exception (for Lord Campbell can hardly be considered to have been Lord Chancellor of Ireland, having held office but for a few months),

[1] Report of the Select Committee of the House of Lords, &c., p. 123.

[2] It is scarcely necessary to say that we allude to the state of things which existed prior to the passing of the Judicature Act.

no holder of the great seal has been a peer since the time of Lord Plunket; and it is to be remarked with respect to him that his elevation to the peerage had taken place previously, viz., on the occasion of his appointment as Chief-Justice of the Common Pleas in 1827.

CHAPTER XII.

Description of Rathfarnham Castle, purchased by Blackburne in 1847.—His appointment as Vice-Chancellor of the University by the late Lord Primate (Beresford).—Letter of the latter.—Reappointment by Lord Rosse, on his becoming Chancellor—Blackburne's appointment by the Palmerston government as Lord-Justice of Appeal.—Letters of Lord Wensleydale and Sir James Knight Bruce on the occasion—Comments of the *Morning Post*.—Return of Lord Derby to power in 1858.—His request to Blackburne to resume the Great Seal.—His refusal, and reasons for declining.

SOME years previously to his elevation to the Great Seal Blackburne purchased from the Marquis of Ely the mansionhouse and demesne of Rathfarnham Castle. Situated at a short distance from the foot of the Dublin hills, and within a few miles of the city, the place, independently of its old and historical associations, presents great attractions. The castle, which was built by Adam Loftus,[1] in the

[1] Born at Swinshead, in Yorkshire, of an ancient and wealthy family, he at an early age attracted the notice of Queen Elizabeth, and having been elected a fellow of Trinity College, Cambridge, became successively Archbishop of Armagh, Lord Chancellor of

latter part of the reign of Queen Elizabeth, not merely as a residence, but as a stronghold to repel the incursions of the mountaineers, although it can lay no claim to architectural beauty, forms, from its solid and massive character, a bold, if not a striking object, and in other respects possesses many features of interest; while the diversified nature of the grounds, which are of considerable extent, their great retirement and seclusion, together with the beauty of the surrounding landscape, contribute to render the old place a delightful retreat. Here Blackburne, surrounded by his family, and by "love, honour and troops of friends," spent his well-earned rest and leisure; books and the varied resources which his home afforded gave him employment, and to the fullest extent he realised Cicero's ideal of a wise —a happy man.[1]

Ireland, Dean of St. Patrick's, and Provost of Trinity College, Dublin. He exerted his good offices with the Queen to obtain a charter for it; and, having been successful in his efforts, became its first provost. He died in the year 1605, and was buried in St. Patrick's Cathedral, Dublin.

[1] "Is, quisquis est, qui moderatione et constantiâ quietus animo est sibique ipse placatus, ut nec tabescat molestiis, nec frangatur timore, nec sitienter quid expetens ardeat desiderio, nec alacritate futili gestiens deliquescat, is est sapiens, quem quærimus, is est beatus; cui nihil humanarum rerum aut intolerabile ad demittendum animum aut nimis laetabile ad efferendum videri potest."—*Tusculan. Disputationum*, lib. iv. sec. 17.

In the year 1851, upon the death of the king of Hanover, Lord John George Beresford, at the time Lord Primate of Ireland, was elected Chancellor of the University, and upon his appointment he offered to Blackburne, by the following letter, the place of Vice-Chancellor, which he accepted :—

"ARMAGH, *December* 12, 1851.

"MY DEAR LORD CHIEF-JUSTICE,—The Provost and senior fellows of Trinity College having done me the honour of electing me Chancellor of the University, the right of nominating the Vice-Chancellor has become vested in me. It requires no deliberation on my part to arrive at the conclusion that in every point of view you would be the person in this country best calculated to fill that situation with advantage to the university and to the public; and I therefore write to request you to allow me to appoint you to it. It will, I hope, be an inducement to you to accept the office, to remember that it was filled by the late Lords Clare, Kilwarden, and Downes; and I hope also that the regard which you cherish for the university will dispose you to undertake the trouble which may occasionally be imposed upon you in discharging the duties.

"In times like the present it is of the greatest

importance to the interests of the university that its highest concerns should be under the guardianship of men of known independence of mind and distinguished ability; and all parties will, I am sure, concur with me in the opinion that Trinity College will have as much protection as can be afforded by a Vice-Chancellor of your high principles, character, and influence.

"I remain,
"My dear Lord Chief-Justice,
"Very faithfully yours,
"JOHN G. ARMAGH."

We do not think that the university ever had any reason to regret the selection which, in its interests, the Primate made, nor that its welfare and safe keeping could have been intrusted to safer or better hands. Blackburne's time, his best energies were at its disposal; and in any difficulty or perplexity the Board of Trinity College were sure of having in their need a cool and sagacious counsellor, of clear intellect and sound judgment, and of whose services (we may add) they did not hesitate to avail themselves. To use his own words, "There was no occasion in which it was in my power to do a service to the university, or to discharge the important

duties of Vice-Chancellor with conscientiousness and zeal, of which I ever failed to avail myself."

When the post of Chancellor became vacant by the death of the Lord Primate, the Board of Trinity College—which, under the provisions of the College Statute of 1857, had the power of naming three candidates from whom the senate were to select the Chancellor—nominated his grace the Duke of Leinster, the late Earl of Rosse, and Lord Talbot de Malahide; and upon the refusal of the Duke of Leinster to allow his name to be put forward, substituted that of Blackburne.

The omission of the name of the latter in the first instance from the list, coupled with the fact of the obvious preference of the board for any one of the others, and the strong feeling which he had ascertained was felt for Lord Rosse on the part of the majority of the senate, decided Blackburne upon withdrawing his name, and not agitating the university by a contest. Lord Rosse, immediately upon his appointment as Chancellor, requested him to remain as Vice-Chancellor, and which post he continued to fill up to the time of his death.

In 1856 the statute creating a court of appeal in Chancery was passed, which was a necessary supplement to the "Chancery Regulation Act"—

a measure introduced by Sir John Romilly some years previously, which altered materially the practice and procedure of the court, and which had for its objects the lessening the expense and expediting the business of the suitors. To this act that constituting an appellate tribunal was a necessary addition; for it is evident that the objects aimed at by Sir John Romilly's act could not be attained unless a court were constituted which would provide a cheaper and more speedy mode of appeal than that afforded by the expensive and dilatory process of the House of Lords.

From causes, however, which we are unable to explain, the "Chancery Regulation Act," as we have already stated, was for some years in operation prior to that creating a court of appeal. When the measure was introduced into the House of Commons, it was so strongly felt that Blackburne was the fittest man for the new post of Lord Justice of Appeal, that it was proposed that his name should be inserted in the act; and the proposition was resisted on the sole ground that it would interfere with the proper functions of the constitutional advisers of the Queen in selecting for the judicial offices. The act provided "that if the judge should have exercised the office of High Chancellor

of Ireland, he should rank next after the Chancellor for the time being," and we have been informed that this clause was inserted in the bill in order to secure Blackburne's acceptance of the office.

The act received the royal assent in July, but Blackburne was not offered the place until the following October, when he accepted it. What caused the delay we are unable to state. There were various rumours afloat at the time, and the names of others put forward by the press, but with these matters we have nothing to do.

Blackburne was again back in harness—the country was to have the benefit of his judicial powers, and great and general satisfaction was consequently felt at his appointment.

Lord Wensleydale wrote as follows:—

"KIRKSTALL GRANGE, LEEDS, *November* 2, 1856.

"MY DEAR SIR,—I sincerely congratulate the country on your appointment to the office of Lord Justice of Appeal in Ireland. I rejoice that you have been induced to give up your happy retirement and devote your eminent judicial talents to the service of the public; and may they long enjoy the great benefit of the sacrifice which you have made. The appointment reflects very great credit on the

government, and I hope Lord Carlisle will have share of it. Remember that I am in town or accessible whenever you come to London, and I hope that you and Mrs. Blackburne will not forget us.

"Believe me, yours very sincerely,

"WENSLEYDALE."

Lord Justice Sir James Knight Bruce conveyed his congratulations in the following :—

"LONDON, *January* 19, 1857.

"PERHAPS I should not have troubled you with this request but for my desire to congratulate, if not you, at least Ireland, on your acceptance for the fourth time of an important judicial appointment. *Quid voveat*, etc., than that the duties of the fourth may (as every one feels assured they will) be performed as worthily and as well as those of the three others."

The *Morning Post*, in commenting on Blackburne's appointment, said, "The gentleman thus specially selected has not been chosen from exclusive party grounds, but altogether from his eminent fitness, and with a view to give practical effect to the principle of placing the right man in the right place.

This will be apparent when we state that Mr. Blackburne served officially under the viceroyalties of Lords Wellesley and Haddington, and that he was Irish Chancellor under the premiership of Lord Derby. He will now be installed in a new office under Lord Carlisle, one of the most popular viceroys that ever governed Ireland; and the appointment, enhancing, as it does, the merit of premier and viceroy, cannot fail to strengthen the confidence of the empire in the able and just administration of public affairs."

In 1858, upon the resignation of Lord Palmerston, Blackburne was again invited to resume the post of Chancellor by the Earl of Derby. The latter writes:—

"ST. JAMES'S SQUARE, *February* 24, 1858.

"MY DEAR LORD JUSTICE,—You will have seen by the papers that very unexpectedly I have been called on to form a government, and one of my first acts must be to ascertain whether you are willing to undertake again the laborious duties of the Chancellorship. There is no one in whose hands I could place that important office with as much confidence as in yours. At the same time it is fair to tell you that the prospects of my continuance in office are

very precarious; and I shall neither be surprised nor offended if, under such circumstances, you prefer your present high and permanent office. I am sure you will be glad to see your old friend Lord Eglinton back in Ireland.

"Believe me, yours sincerely,

"DERBY."

He received at the same time a letter from Lord Eglinton, couched in the most warm and kind language. It is as follows:—

"ST. JAMES'S SQUARE, *February* 24, 1858.

"MY DEAR 'CHANCELLOR,'—I have never addressed you by any other name, and I sincerely trust that I may soon again have the *right* to do so. By this post you will receive a letter from Lord Derby, placing at your disposal the office which you so worthily held when I was in Ireland; and as I have been appointed to my old post, I cannot resist adding my most urgent solicitations to his that you will do us the favour of accepting it. I know that I am asking you to give up a certainty for an uncertainty; and the duration of our ministry for any length of time is doubtful; but I can conscientiously assure you that a great part of my pleasure in returning to

Ireland will be lost if I am deprived of your co-operation. I must also beg you to consider what a difficulty we should be placed in with regard to our law appointments if you were to fail us. I can never forget the kindness you showed me and the assistance you gave me when I found myself launched in public life; and I hope absence has not obliterated the interest you then took in my success.

"Believe me, very truly yours,

"EGLINTON AND WINTON."

Blackburne, however, declined to accept the post, as his advanced age and the state of his health made him reluctant to undertake the cares and responsibilities of the office through fear that he should not be able to discharge its duties with advantage to the country or credit to himself. His refusal to accept the post did not, however, in any way alter the friendly relations which subsisted between him and Lord Eglinton. His services and advice, when sought for, were freely at the latter's disposal, and deep regret was felt by both when Lord Eglinton for the last time bade farewell to Ireland.

CHAPTER XIII.

Close of Blackburne's official career.—Resumption of office by Lord Derby, in 1866.—Difficulties of the new administration with respect to Ireland.—Pressing solicitation of Lord Derby to Blackburne to take office.—His acceptance of it.—Circulation of reports as to the terms upon which he became Lord Chancellor.—Mr. Maguire's question in the House of Commons.—The Chief Secretary's reply.—Blackburne's undiminished powers as judge.—Intrigues to force him to retire.—His temporary illness made the pretext.—Circumstances which led to the tender of his resignation to Lord Derby.—The refusal of the latter to receive it.—His subsequent acceptance of it.—Unanimous addresses from the bar and solicitors on Blackburne's retirement.—Offer of a baronetcy by Lord Derby.—His refusal of it.—His death in 1867.

We have now arrived at the closing scene of Blackburne's long and eventful life. The reminiscences are to us very painful; and there are many circumstances connected with it which we would gladly pass by in silence could we in justice to his memory do so; but as his acceptance of the great seal in 1866 was made the subject of comment and observation in the House of Commons, we feel that we have no

alternative but to lay before our readers the causes which led to his acceptance of the post of Chancellor, and the circumstances of his subsequent resignation. In bringing the facts before them, we shall abstain as much as possible from making comments or drawing conclusions (unless when we feel ourselves compelled to do so), as we prefer for many reasons that the task of criticism should devolve on our readers rather than on ourselves.

When Lord Derby in the above year was again placed, by the resignation of Earl Russell, at the head of affairs, the condition of things, as regarded the position of the Conservative party, had not materially changed. It was still in a minority in the House of Commons, and was therefore, on all vital questions, at the mercy of its opponents. Ireland was, however, the great obstacle in its way; and it was hoped by some of the leaders of the party that, by establishing the government on what was termed "a broad basis," the Irish opposition might be to some extent neutralized, if not altogether removed.

Difficulties, however, met the project in the outset; and although all the posts connected with the English administration had been filled up, those in Ireland, with the exception of the places of the Lord-Lieutenant

and Chief Secretary, remained vacant. Various reasons were assigned for the delay, with which, however, we have nothing to do; but whatever they were, the impediments were such as to bid fair to bring matters (in Ireland) to what may be termed "a dead lock."

Under these circumstances, the following letter was written by Lord Derby to Blackburne. It shows very clearly the position in which the government was placed, and that it rested with the latter to extricate it from its embarrassments:—

"*Confidential.*

"DOWNING STREET, *July* 12, 1866.

"MY DEAR LORD JUSTICE,—Though we have neither met nor communicated for many years, I write to you with the frankness of an old friend, who ventures to think that you will be willing to do something to aid his government, which, from various causes which I need not specify, is in considerable difficulty about the Irish legal appointments. But if you would consent again to take (if only for a short time) the duties of Lord Chancellor, I think the ground is cleared of the chief difficulties. . . . . In short, the whole of our arrangements depend upon your acceptance, and will be in utter confusion if you fail to

aid us. I hope, however, I shall not make this appeal in vain to our old friendship. I have begged Cairns to stop a day in Dublin on his return from his election, and to talk this matter over with you and Napier.

"I am, my dear Lord Justice,

"Yours very sincerely,

"DERBY."

Such was the letter in which Blackburne was asked to resume office. It could not have well been framed in language of stronger entreaty. The necessity was urgent, and he so felt it; for although he had on a former occasion declined the post of Chancellor, yet, to relieve the government from difficulty, he waived all objections, and acceded to the request of Lord Derby.

Our readers would, we think, naturally suppose that the appointment of so eminent a man, whose name was in itself a tower of strength to it, would have been welcomed by the Conservative party. This, although true to a great extent, was by no means altogether the case. He had been but a short time in office when a report was carefully set afloat that he had taken the post merely for a temporary

purpose, and that it was on this understanding that it had been offered for his acceptance.

How this report originated we are unable to say. It cannot be denied that, if true, it was calculated to injure not merely the fair name and reputation of Lord Derby, but also that of Blackburne—of the former for having offered the place on such terms, and of the latter for having accepted it. But in truth no such compact or arrangement was ever thought of by the former, as we think Lord Derby's letter plainly demonstrates. The only sentence in it, viz., that in which Blackburne was asked "to take (if only for a short time) the duties of Lord Chancellor," does not bear (nor was it intended to bear) the meaning attempted to be put on it. The true and natural sense of the words is plainly this: "The government are in a difficulty; your acceptance of the great seal will relieve them from it. You are not, however, to be in any way fettered, but are to be a free agent to resign it when you please."

If this view required confirmation, it is to be found in a letter of Lord Derby addressed to the Chancellor in the following January, in which he writes:—

"It gave me great pleasure again to see the handwriting with which I was so familiar some thirty-five

years ago, in which, moreover, I can trace no change; and to hear from yourself so satisfactory a report of your continued health and strength to bear the labours of the high office which you so kindly took upon yourself. Though I have hardly a moment to myself, I cannot but take this opportunity of congratulating you on the signal success which has attended the government of Ireland, of which you are a member. . . . . Wishing you a long continuance, and health and vigour to discharge the duties of your high office,

"I am, my dear Lord Chancellor,

"Yours sincerely,

"DERBY."

The rumour of the temporary character of Blackburne's tenure of office, which was so carefully and industriously circulated, effected its purpose, and accordingly we find Mr. Maguire in the House of Commons interrogating the Chief Secretary for Ireland on the subject.[1]

"Mr. Maguire asked the Chief Secretary for Ireland whether, before appointing Mr. Blackburne Lord Chancellor of Ireland, the government consulted lawyers of eminence practising at the Irish bar as

[1] *Vide* the parliamentary report of the *Times*, August 4th, 1866.

to the present capability of that judge, by reason of his advanced age, to deal successfully with cases either of great magnitude or of a complicated and intricate nature, and whether the government intend to retain that gentleman as chief judge in equity.

"Lord Naas: In answer to the honourable gentleman's question, I have to say that the noble lord, the first minister, in making the appointment to which the honourable member refers, did not think it necessary to consult lawyers of eminence practising at the Irish bar as to the capability of Lord Chancellor Blackburne. No one who knows the high character of that gentleman can imagine for a moment that he would have accepted an office the duties of which he felt himself in any way incapable of performing, or to perform, not in the ordinary manner, but in that manner in which he has for many years discharged the many various and highest duties connected with the administration of the law. Sir, I believe Lord Chancellor Blackburne does possess a professional character hardly ever attained by any man, and certainly in his own branch of the law not attained by any other man at the Irish bar; and I think that I state what will give to the honourable member considerable satisfaction when I say that, since his appointment as Lord Chancellor, I

have received communications from gentlemen who practise, and who have been in the habit for years past of practising, before him, informing me that, from their own observation and experience in pleading before him, they can testify that the Lord Chancellor of Ireland has not shown in any way any failing whatever, but that he has, in the decisions which he has given since he was appointed, displayed all that attention, acumen, and learning, for which he has for so many years been so highly distinguished."

It will be observed that Mr. Maguire put two distinct questions, but to one of them alone (the first) was a reply given. Upon the silence of the Chief Secretary with respect to the second, we feel ourselves constrained to make the following observation.

He could hardly have been ignorant of the reports which were circulated with respect to the terms on which Blackburne had taken office, and of the importance therefore of giving them unqualified contradiction; and we confess we think that, under these circumstances, it would have been the fairer and more straightforward course to have given a full and explicit denial of any such intention on the part of the government as was hinted at by Mr. Maguire, and thus to have put an end to the unworthy rumours, while, by abstaining from doing so,

he unquestionably helped to strengthen and confirm them.

Time, however, by proving their falsity, set at rest the reports. Blackburne took his seat in the Court of Chancery in the following November; and at no previous period was his great intellect clearer or more unclouded, or his power of disposing of business greater. In Hilary Term he sat for the last time, and heard and decided some most important cases.[1] Towards the latter end of the term he was attacked by his old enemy the gout, and was unable to finish the business, of which, however, but a few cases remained unheard.

Although at the risk of prolixity we must at some little length detail the circumstances which led to the resignation of Blackburne, and which (we cannot avoid saying) if they did not accelerate, saddened the close of his life. The attack of gout which had

[1] *E.g.*, the case of Beecher *v.* Downing (for some cause or other not reported), in which, the decision of the Chancellor having been reversed by the court of appeal, the case was eventually taken to the House of Lords. And we have been credibly informed that had it not been compromised after argument, it was the general opinion that the decision of the court of appeal would have been reversed, and the decree of the Chancellor upheld.

We may also refer to the case of Gore *v.* O'Grady, 1st Irish Reports (Equity), p. 1., the Chancellor's judgment in which contains an admirable reading on the construction of the Renewable Leasehold Conversion Act.

put a premature end to his sittings in Hilary Term, after a few weeks' care and rest, passed away, and he was restored to his wonted health and vigour. He not only attended the levee of the Lord-Lieutenant, but a few days afterwards shared his Excellency's hospitality. The winter had proved exceptionally severe, but its severity did not prevent Blackburne (whose bodily habits were as active and energetic as his mental) from taking his accustomed exercise. We do not recollect that after his recovery he ever remained within doors a single day, and he might frequently have been seen buffeting the elements with the resolution and determination of a much younger man.

Accordingly, regardless of consequences, he remained out until a late hour in the afternoon of a severe day in the latter end of February, and the next day spent some hours at Rathfarnham, and (if we are not mistaken) returned to Dublin (a distance of some miles) on foot. Be this as it may, he complained of a sensation of pain in his eye, and the next morning, considerable swelling having supervened, his medical adviser was called in, who, we believe, pronounced it to have arisen from a gouty affection, induced by cold and exposure. By care and skilful treatment, the inflammation after some

days subsided, and by the end of the following week he was able to attend to business. The attack was no doubt not only severe, but dangerous; but when it was got under, rest and care, humanly speaking, would, we believe, have restored him again to health.

This, however, was not to be. There can be no doubt but that for some time intrigues existed for the purpose of making him resign office, and of this fact Lord Derby was cognizant; for in a letter, written some few months after Blackburne's retirement, there is the following passage:—"I am well aware of the intrigues which were going on in Ireland to induce him to resign the Chancellorship, but they produced no effect on my mind;" and we believe that the reports to which we have already alluded were circulated for the purpose of preparing the public mind for such an event. In all this it seems to have been forgotten, or treated as a matter of no account, that he had accepted, without terms or conditions, the seals at the urgent request of the prime minister;—that his mental health and vigour were unimpaired; and that, in accepting the post of Chancellor, he had surrendered that of Lord Justice of Appeal, and in doing so the occupation which it afforded.

His second illness was deemed to be a good and fitting opportunity for forcing him if possible to resign. In the early part of the week during which he was indisposed, the Fenian outbreak had taken place, and this afforded an admirable pretext and ground to work upon. It was determined, therefore, that he should be called on at once to retire, and an intimate friend was asked to convey to him what were alleged to be the wishes of the government on the subject. He accordingly waited on the Chancellor, who in reply to his communication said, "that the high office had been intrusted to him by Lord Derby, and into his hands alone would he return it;" and a letter (of which his eldest son and his secretary were the bearers) was written putting the place at the disposal of Lord Derby, who then declined to accept his resignation.

Lord Derby, however, soon afterwards changed his mind, and in about a week after the interview to which he refers wrote as follows:—

"ST. JAMES'S SQUARE, *March* 20, 1867.

"MY DEAR LORD CHANCELLOR,—Your son and your private secretary called on me a short time ago, and brought me a letter in which you tendered to me the

resignation of your high office in a manner as generous as that in which you had accepted it, 'if I should be of opinion that it would be for the public service that I should accept it.' I answered without hesitation that nothing would induce me to accept the resignation, except at his own desire, of so old and valued a friend, and as I well knew so able a colleague, but the conviction that the public service actually required it; and a certificate which they brought me from your medical adviser as to the state of your health (the only ground on which a question could be raised) led me to hope that in a very short time you would be equal to the arduous duties of your office, and to postpone any step in the matter till I had an opportunity of communicating with the Irish government. Lord Naas, however, who has just returned from Ireland, has represented to me in such strong terms the painful position in which the Lord-Lieutenant is placed in these most critical times by the absence of a confidential legal counsellor with whom he may at any moment communicate upon matters of pressing urgency—the Attorney and Solicitor-General being both required in London, or if in Dublin, overwhelmed with business—that I feel I ought not longer to hesitate in accepting the resignation which you so kindly placed at my disposal. You

will, I am sure, believe that I do so with sincere regret, and I can only hope that release from official cares (from which I sincerely wish I could myself escape) may tend to an early and complete restoration of your health. . . . . Assuring you of my very sincere regard,

"I am, my dear Lord Chancellor,

"Most truly yours,

"DERBY."

With this letter Blackburne's public career ended. It only hastened its termination by a very short period, as we believe that in any case he would have sent in his resignation before the ensuing term, which was but a few weeks distant. The shock which he sustained on receiving the first intimation of the wishes of the government proved too much for him: he felt that it was a harsh and cruel return for his abnegation of self, and for the sacrifices which he had so cheerfully made. No complaint nor unkind word ever escaped from him, but it was impossible for those around him not to see that mental depression was preying on him, and that this, acting upon his bodily health, would ere long bring him to the grave—

impossible also not to see that the great and lofty spirit of the man was broken by the unworthy treatment which he had received.

A kind and feeling letter was written to him on his retirement by the Lord-Lieutenant,—his Grace the Duke of Abercorn; and we here take occasion to mention, as a matter of justice and of right, that although Blackburne was aware that a cabal had been formed to oust him from office, he stated in the most distinct and emphatic manner his assurance and belief that his Grace had no participation whatever in the plot. We may further add that this feeling was also entertained by Blackburne's relatives and friends.

Shortly after his retirement a general meeting of the bar was held, at which the following address unanimously agreed upon;—

"TO THE RIGHT HONOURABLE FRANCIS BLACKBURNE.

"SIR,—The bar of Ireland desire, while they bid you farewell on the occasion of your retirement from the bench, to express to you their feelings of respect and admiration for the great qualities which have distinguished you, and have reflected so much honour upon your profession. The history of your career,

extending over more than sixty years, contains a record of which the Irish bar are proud, and which is in many respects without a parallel. In your earlier years at the bar those qualities which had won the great distinctions of your college course raised you to pre-eminence among rivals with whom few could have ventured to compete. Having reached the highest point of professional eminence, and proved yourself a sound lawyer and consummate advocate, public honours and public trust soon followed as the just recognition of your well-earned position. In the discharge of your duties as first law officer of the crown during times of difficulty, your abilities were ever equal to the occasion, while your moderation and firmness have left an example worthy of imitation. You were then in succession Master of the Rolls, Lord Chief-Justice, Lord High Chancellor, and Lord Justice of Appeal. In the history of this country no man every filled so many high and judicial offices, and brought to the discharge of each such great and varied powers. Calm and impressive dignity, great grasp of mind, unequalled sagacity, and a rare faculty of clothing thought in clear and simple language, conspicuously marked your administration of the law. Your uniform courtesy and kindness will be long remembered by us all, and you

bear with you into retirement the sincere good wishes of every member of the Irish bar.

"Signed for the bar of Ireland, in pursuance of a resolution unanimously adopted at a meeting held in the Law Library, Four Courts, Dublin, April 24th, 1867.

"ROBERT D. MECREDY,

"Father of the Bar."

Blackburne's reply was as follows:—

"It is with feelings of no ordinary character that I reply to your address, so kind, so touching—I would add so affectionate; and it causes me no little difficulty to find words to give adequate expression to them. It affords me the deepest gratification to receive from the bar of Ireland such a recognition of my services, when I consider its worth, its learning, and its proud character. In your feeling address you allude to the several high offices which I from time to time have filled by favour of the crown, and to the mode in which their attendant duties were performed. I can only say that in the discharge of those duties I felt that a sacred trust was committed to my keeping, and that a strict regard to the interests of justice and to the welfare

of our country, and perfect impartiality between man and man, should be my guiding principles of action.

"In bidding you farewell at the close of a long professional career, I cannot do so without in the fullest manner reciprocating the kindly sentiments which your address contains, and wishing you, my friends, a long enjoyment of life and happiness, and of success in the noble profession of which we are members. I had hoped to have had the great pleasure of being able to receive your address in person; but I deeply regret that, owing to my lengthened illness, I am unable to do so, and must therefore send to the Father of the Bar the reply which I should have so much wished to deliver in person."

Such a unanimous expression of feeling on the part of the bar was, we believe, almost without precedent. Men of all shades of opinion for once merged their differences, and united in paying their tribute of admiration and esteem to one so universally respected and beloved.

Upon the same occasion an address was presented by the attorneys and solicitors of Ireland, which we subjoin, together with his reply :—

"TO THE RIGHT HONOURABLE FRANCIS BLACKBURNE, LATE LORD HIGH CHANCELLOR OF IRELAND.

"SIR,—We feel that we would not properly represent the attorneys and solicitors of Ireland if we allowed an event of such importance in our legal annals as your retirement from public life to pass by without an expression of our sincere esteem and admiration for your high judicial character. We have seen you fill four eminent positions, any one of which would have tested the qualities of a judge, and in each we have experienced the benefit of your great ability, acumen, and learning, as well as your incomparable patience, courtesy, and impartiality. As Master of the Rolls, Lord Chief-Justice, Lord Chancellor, and Lord Justice of Appeal, you have ever upheld with firmness the dignity of the bench, while you extended to the practitioners of the courts every reasonable indulgence, consideration, and confidence. In your hands both law and equity were, in their respective spheres, administered with equal power and ability, and with that calm, unbiased judgment which ever inspires confidence in the minds both of the suitors and the legal profession. We desire, at the close of a judicial career so long, so eventful, and so distinguished, to express on behalf of our profession

our best wishes for your future welfare, and to assure you that you will carry into your retirement the highest esteem and respect of the attorneys and solicitors of Ireland.

"I remain, sir, on behalf of the Council of the Incorporated Law Society of Ireland,

"Your faithful servant,

"RICHARD J. THEO. ORPEN, *President.*

"JOHN H. GODDARD, *Secretary.*

"SOLICITORS' HALL, FOUR COURTS, DUBLIN,
April 24, 1867."

Reply:—

"TO THE ATTORNEYS AND SOLICITORS OF IRELAND.

"GENTLEMEN,—It is to me a source of the most unfeigned gratification to receive such a mark of approbation as that which has been presented to me by the attorneys and solicitors of Ireland. Brought for many years, both as barrister and judge, into intimate connection with members of your profession, I should indeed be wanting if I did not express the deep sense which I have always entertained of their high character and honour, and of the talents and skill which they brought to the discharge of their

arduous and responsible duties. For the manner in which you have alluded to my public services I cannot feel too grateful. It affords me the deepest pleasure to find at the close of a long, and I may add of an eventful career, that I retire from the cares and responsibilities of public life, having gained the approbation and esteem of those whom I so highly value. I should have wished (had my illness not prevented it) to have replied to your address in person, but my failing health forbids it; and I am, therefore, reluctantly obliged to send these few lines to your secretary."

This address, no less than that which emanated from the bar, was of no small significance, showing, as it did, what was the feeling of the attorney and solicitor profession,—that they recognized in him that rare union of qualities and attributes which made him one of the greatest judges who had ever filled the bench in either country.

In the following month of May he received from Lord Derby a letter offering him a baronetcy which he declined, stating "that the subject had come altogether on him by surprise, that he had never directly or indirectly sought for the elevation in rank, and that he wished to have his name solely

identified with the various services which in the eventful period in which he had lived it had been his public duty to discharge."

We have but little more to add. His life and public labours may be said to have terminated together—a few months alone separated them. He had never recovered his strength after the illness of the previous spring, and he seemed (although his mind was perfectly clear) to have taken a distaste to any mental exertion, and to be averse to care or trouble of any kind. He was glad to see his friends, and to have his family around him; but it was plain that this world and its concerns had become to him things of the past, and that all interest in them had disappeared.

He did not seem to have any chronic disorder, but his strength gradually diminished, and he passed away, without pain or suffering, on the 17th of September, 1867, in the eighty-fifth year of his age.

He was buried in Mont Jerome Cemetery, near Dublin, and his remains were followed by a large concourse of all classes, who wished to mark their sense not merely of his great public character, but of his private worth and virtues, and of the great loss which their country had sustained.

CHAPTER XIV.

Sketch of Blackburne's private life and character.—Their distinguishing features.—His views on the subjects of the "Irish Church" and the "Land Question."—Matter of regret that he was personally so little known in England.—Lord Brougham's admiration and friendship.—Characteristic anecdote.—Circumstances under which Blackburne was asked to attend a Cabinet Council at the time of the O'Connell monster meetings.—His friendship with the successive Viceroys since 1831.—Lords Clarendon and Carlisle.

We now approach the last part of our subject, the treatment of which we wish for many reasons had not been necessary. But the biography of Blackburne would manifestly have been incomplete, were a description of his private life and character omitted. Their just and faithful delineation is in itself a task of no small difficulty, while our near relationship necessarily exposes us on the one hand to the charge of partiality, or on the other to that of not having done sufficient justice to his private worth and virtues. It will be for those

who knew and appreciated both, to say on which side we have erred.

There was in Blackburne such a rare assemblage of fine qualities and attributes, that it is by no means easy to single out or select from them any one in particular which more than another calls for especial observation. Perhaps his unaffected simplicity was the feature in his character which chiefly attracted an ordinary observer. This, which proceeded from a great sweetness of temper, kindly disposition, and a forgetfulness of self, had in itself an indescribable charm, which, enhanced by his possessing a singularly sweet and melodious voice,[1] and a charming diction, took as it were by storm those who were brought in contact with him. His courtesy and urbanity were proverbial: alike to all, he was free on the one hand from stiff and chilling coldness, and on the other from that so admirably described by Sir Walter Scott as "painful politeness," and which is perhaps in its own way as objectionable.

We have already alluded to his sweet and even temper, which it was not easy to ruffle, and there

[1] We have been told that Sir John Stevenson, the well-known composer, said "that Blackburne's voice was so harmonious that he could set his speeches to music."

was at the same time about him a repose which even under trying circumstances it was difficult to disturb. Not that his temperament was cold or his nature unfeeling. Possessed of the warmest sensibilities, he shone in every phase of life, whether as husband, father, relative, or friend.

His tastes and habits were of the simplest character. Careless about either show or display, he viewed hospitality in the light of a virtue; and delighting in society, of which he was so great an ornament, the gathering of his friends around him was always a source of real pleasure and enjoyment: while of the companionship of children he was particularly fond.

Although endowed with a great natural taste for music, it had not been cultivated. Possessing, however, a fine ear and sweet voice, his execution of a simple song or ballad was a source of great enjoyment to his hearers. In Moore's Melodies he especially delighted. The performance of the works of the old masters afforded him much pleasure, and he was a frequent attendant on Sunday afternoons at the services in St. Patrick's Cathedral. It is hardly necessary to add that he was a supporter of the principal musical societies in Dublin.

Large-hearted and liberal, no appeal was ever made to Blackburne without response, and the local as well as other charities found in him a munificent benefactor.

His character for generosity was proverbial, and advantage was of course taken of it by either impostors or rogues. The street beggars knew him well, while a different class—begging-letter impostors, for instance—practised either upon his warm feelings, or upon his inability from want of time or other circumstances to ascertain the truth or falsehood of their stories. We recollect his saying that he three times gave money for the purpose of burying a man, and that upon either the first or second occasion after he had been led to suppose that the impostor had been laid in his last resting-place, he saw him walking in the streets of Dublin. Proof, however, was on the last occasion given that he had in reality "shuffled off his mortal coil," for after the third time no further attempt at imposition was made.

We were ourselves the means of intercepting money which had nearly made its way into the pocket of a rogue who presented a letter which purported to come from a neighbour, and which, commencing with the usual formula, "My dear Sir," contained a high

encomium on the bearer, and having recommended him to the good offices of the Lord-Justice, concluded as follows: "and your petitioner will ever pray." —A. B."!

It is hardly necessary to add that as soon as we taxed the rogue with the impudent fraud, he beat a rapid retreat, and we saw no more of him.

Although singularly free himself from any weaknesses or failings, his kind and benevolent disposition caused him to make the fullest allowance for, and to view with leniency those of others. Intolerance or illiberality in any form he could not endure, for he looked on both as foreign to the true spirit of Christianity. He said that he once listened to a preacher in a country church in one of the most beautiful parts of Wicklow, who took occasion to denounce as Sabbath-breaking the conduct of those who, confined by their several businesses or occupations during the previous week, had availed themselves of their day of rest to obtain some fresh air, and repose from their toils. The sermon made an impression on Blackburne, for he often alluded to it, and characterised it as having been marked by great unkindness and want of charity.

He used to mention with great pleasure that he had on one occasion been the means of preventing a

duel from being fought. An early riser, he was (we believe) in the habit of riding before breakfast, and on one Sunday morning, the 18th of June, 1815 (the very day on which the battle of Waterloo was fought), as he was taking his accustomed ride through a secluded lane in the neighbourhood of Clontarf, he saw some people assembled on a hill at a short distance. Their movements attracted his attention and roused his suspicions that all was not right. He rode up the hill, and found that preparations were being made to fight a duel. There appeared to be some parleying, as upon his appearance (for he was at once recognised) the belligerents agreed to leave the matter in dispute to him, and to act upon his determination. He soon decided that the affair should be amicably settled, and so it ended.

Many years afterwards he was accosted by a perfect stranger, who recalling to his recollection the circumstances, stated that he had been one of the principals on the occasion, and that he felt under the greatest obligations that one man could be under to another, because humanly speaking he had saved his life.

We have not as yet referred to Blackburne's conversational powers. In addition to a keen sense of humour and a fund of anecdote and story (chiefly in

connection with the men of his own profession of his earlier days), there was about him an absence of reserve and a freedom which made him a delightful companion. To use the language applied to his celebrated ancestor, Ezekiel Hopkins, by his biographer, "he had a clear head and solid judgment, a quick fancy and a flowing wit, and was every way accomplished for address and discourse, and was so courteous and affable, so gentle and obliging, so instructive and communicative, that all who conversed with him loved and admired him."

It may not be uninteresting, although both are now of the past, to know what was the opinion which he entertained on the question of the abolition of the Irish Church in its relation to the Union, and on that with respect to landlord and tenant.

Some years prior to his death, and before the introduction of the Church Bill, he, in course of conversation with ourselves, said: "England can never destroy the Irish Church, because, if she does, she will sever the Union."

We have only to refer to the Articles of Union to see the reasons upon which his views were founded. The preamble states[1] "that the two

[1] 40th George 3rd, cap. 38 (Irish).

Houses of Parliament of Great Britain and the two Houses of Parliament of Ireland have severally agreed and resolved that, in order to promote and secure the essential interests of Great Britain and Ireland, and to consolidate the strength, power and resources of the British empire, it will be advisable to concur in such measures as may best tend to unite the two kingdoms of Great Britain and Ireland into one kingdom;" and the fifth Article of Union provides "that the Churches of England and Ireland, as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland; . . . and that the continuance and preservation of the said united Church as the Established Church of England and Ireland shall be deemed and taken to be an essential and fundamental part of the Union."

We may add that Lord Plunket entertained the same views. He said "that, speaking of the Protestant Established Church in a political point of view, he had no hesitation to state that the existence of it was the great bond of union between the two countries; and that, if ever that unfortunate moment should arrive when they would rashly lay their hands on the property of the Church to rob it of its right,

they would seal the doom and terminate the connection between the two countries."[1]

Our readers will forgive us for quoting, before leaving the subject, the following admirable reading with reference to the preamble of the Act of Union contained in a letter addressed anonymously to the *John Bull* newspaper, in January 1831. The writer says:—

"The Irish Union (as well as the Scotch), in which, as has been before observed, their principles are mutually blended, is an incorporate Union, solemnly entered into and confirmed by the then two contracting estates of Great Britain and Ireland; and by the entering into and confirmation of the Articles of such Union, the contracting estates became, and are, totally annihilated, without any power of revival except by a revolutionary remodelling of the present constitution. The Articles of the Irish Union are in fact, the acts of, and ratified and confirmed by, a convention, the component members whereof did, by such convention, merge their individual interests in the general convention; and a great part of these members resigned their political existence upon the ratification of the Articles of Union."

[1] *Vide* Sir R. Peel's Memoirs. John Murray: London, 1856. Vol. i. p. 7.

On the land question Blackburne's views were equally explicit. He said that he was unable to see how the legislature could interfere in matters of contract; and that his experience as a landlord had taught him that in most cases the so-styled improvements of tenants in Ireland were the reverse, and that estates would be better without them. His opinion on this latter point is entitled to some weight, as he always acted on it, and carried out the improvements on his own property in a great measure, if not altogether, at his own cost.

It must always be matter of regret that he was personally so little known in England. Devotion to a laborious profession, and his unwillingness to enter upon a parliamentary life, naturally contributed to this result. But by those who did know him he was fully appreciated. We may instance Lord Brougham, who entertained for him the greatest admiration and regard, and never omitted an opportunity of warmly expressing his sentiments. We recollect Blackburne mentioning the following eminently characteristic circumstance:—

Having been summoned as a witness to the House of Lords, to give evidence we believe on the education question, he was one day disengaged, and sauntered in when the House was sitting.

Lord Brougham at once saw him, and, rushing down, took him by the arm, and, placing him on the woolsack (very much, we believe, to the astonishment of the Lord Chancellor), said: "Sit down there; it is your proper place."

The following letter was written on the return of Lord Brougham to England after presiding at the Social Science Congress in Dublin, and shows the terms of friendship which subsisted between them:—

"BROUGHAM, PENRITH, *August* 26, 1861.

"MY DEAR LORD-JUSTICE,—I beg your kind acceptance of some books which I have directed to be forwarded to your lordship. They are works of mine, and your giving them a place in your library will be an addition to the many kindnesses which I have received at your hands.

"Believe me, most sincerely yours,

"H. BROUGHAM."

Although Blackburne was personally but little known in England, the following occurred upon one occasion when he was in London. The circumstance took place at the time of the O'Connell "monster meetings" (as they were termed), and

shortly before the "State trials." He was at the time Master of the Rolls, and had ceased to have any official connection with the government.

As he was walking in the neighbourhood of Charing Cross, a gentleman, evidently high in official position (but with whom he was not acquainted), addressed him by name, and said: "The Irish intelligence which the government has received is very startling. A cabinet council is sitting (or is about to sit) in deliberation. Have you any objection to assist it with your advice and suggestions?" He of course at once assented, and proceeding to Downing Street was taken into consultation, and, in accordance with his opinion, it was decided that a proclamation should be issued without delay to repress the meetings. This was done the next day, and brought the government and O'Connell to an issue as to their legality.

There is one remaining circumstance in connection with Blackburne's career, which is, we believe, without precedent—viz., that, with perhaps a single exception (that of the Earl of Mulgrave, with whom he was unacquainted), he, from the period when he first entered public life, was on terms of friendship with every Viceroy—not merely those with whom he was connected by official ties, but also

those whose political views were at variance with his own. It is said that upon one occasion a newly-appointed Lord-Lieutenant, previously to his departure for Ireland, called on the premier for the purpose of receiving his final instructions. The minister, in answer to his question, "What course of action he wished him to pursue?" replied: "Keep a good cook, and consult Blackburne." We neither vouch for the truth of the story, nor do we know the name of the minister of whom it is told: we merely give it for what it is worth, and as showing the estimation in which he was held, and the weight which was attached to his opinion on every question relating to Ireland.

Not to particularize further, his relations with Lord Clarendon were of the most friendly, we may add almost intimate character, as the following extract from a letter written by the latter shortly after his departure from Ireland demonstrates:—

"GROSVENOR CRESCENT, *March* 5, 1852.

"MY DEAR LORD CHANCELLOR,—I was very sorry not to have been at home when you had the goodness to call here, and to find that you had left London when I went to your hotel yesterday; I

wished once more to have shaken hands with you, and to tell you how much I was gratified by your letter, and how highly I value your good opinion. There is nothing upon which my memory will dwell with greater pleasure than our relations together during five years, and the confidence I felt that in every difficulty I might rely not only on your judgment and experience, but on your friendship, nor can I sufficiently thank you for the many proofs of it that I received."

The kind, genial, warm-hearted, and accomplished Earl of Carlisle fully appreciated and admired him. At a meeting of the Hibernian Catch Club, of which Blackburne was president, and of which the Earl of Carlisle was, if not a member, at all events a frequent guest, he, in proposing the health of the president, concluded his speech as follows: "He ran through each mode of the lyre, and was master of all." The quotation,[1] in itself apposite when the objects of the club are borne in mind, had a peculiar fitness when applied to Blackburne, and showed how deep-felt and how great was the admiration of the speaker, and how thoroughly he appreciated him.

Our work is now concluded. To the best of our

[1] Moore on the death of Sheridan.

ability we have endeavoured to place before our readers a true and faithful picture of the eminent man who threw so great a lustre on this country. The portraiture is, we feel, but faint and imperfect —to do this adequately would, we confess, be a task beyond our powers. For the rare combination of noble qualities, the exquisite union of simplicity with greatness, the sunny sweetness and brightness of his disposition, his great wisdom and sagacity, contributed to form a character as unique as it was beautiful.

THE END.

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